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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

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UNITED SERVICES AUTOMOBILE) (
ASSOCIATION

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) (CIVIL ACTION NO.

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VS.) (2:18-CV-366-JRG

6

) (MARSHALL, TEXAS
JANUARY 8, 2020

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WELLS FARGO BANK, N.A.) (8:33 A.M.

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TRANSCRIPT OF JURY TRIAL

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MORNING SESSION

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BEFORE THE HONORABLE CHIEF JUDGE RODNEY GILSTRAP,

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UNITED STATES DISTRICT JUDGE

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19 Official Court Reporter
20 United States District Court
21 Eastern District of Texas
22 Marshall Division
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24 Marshall, Texas 75670
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23 (Proceedings recorded by mechanical stenography, transcript
24 produced on a CAT system.)
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P R O C E E D I N G S

(Jury out.)

COURT SECURITY OFFICER: All rise.

THE COURT: Be seated, please.

All right. Counsel, as we discussed in chambers, an issue arose yesterday. The Court has satisfied itself and the Court has concluded that the accused product has been properly disclosed as prior art in the case.

All right. Are the parties prepared to read into the record the items from the list of pre-admitted exhibits used during yesterday's portion of the trial?

MR. BUNT: Yes, Your Honor, we are.

THE COURT: Please proceed.

MR. BUNT: Your Honor, the following Plaintiff's Exhibits were used yesterday. Plaintiff's Exhibits No. 5, 8, 14, 72, 206, 220, 240, 329, 365, 366, 417, 436, 486, 487, 1069, 1083, 1152, 1296, 1399, 1402, 1409, 1416, 1470, and 1471.

THE COURT: Any objection to that offer from Plaintiff -- given by Plaintiff, any objection from Defendant?

MR. UNDERWOOD: No objection from Defendant, Your Honor.

THE COURT: All right. Does Defendant have a similar rendition to offer?

08:35:15 1 MR. UNDERWOOD: We do. There was one Defendant's
08:35:18 2 Exhibit, DTX-11.

08:35:19 3 THE COURT: Any objection from Plaintiff as to
08:35:22 4 that offer by Defendant?

08:35:23 5 MR. BUNT: No, Your Honor.

08:35:24 6 THE COURT: All right. Thank you, counsel.

08:35:29 7 I understand Plaintiff is going forward at this
08:35:32 8 juncture with additional witnesses by deposition. Are we
08:35:35 9 prepared to do that?

08:35:36 10 MS. GLASSER: Yes, Your Honor.

08:35:37 11 THE COURT: Please bring in the jury, please.

08:36:01 12 COURT SECURITY OFFICER: All rise.

08:36:02 13 (Jury in.)

08:36:03 14 THE COURT: Good morning, ladies and gentlemen.
08:36:06 15 Please be seated.

08:36:08 16 Welcome back.

08:36:09 17 Plaintiff, call your next witness.

08:36:13 18 MS. GLASSER: Good morning, and may it please the
08:36:19 19 Court.

08:36:19 20 USAA calls Mr. Jeffrey Easley, associate vice
08:36:24 21 president and corporate representative of USAA, for the
08:36:27 22 second portion of his deposition.

08:36:34 23 THE COURT: Proceed with the witness by
08:36:36 24 deposition.

08:36:36 25 (Videoclip played.)

08:36:37 1 QUESTION: Good morning, Mr. Easley. Can you
08:36:40 2 state your full name for the record, please?

08:36:42 3 ANSWER: Full legal name?

08:36:43 4 QUESTION: Yes.

08:36:44 5 ANSWER: Jeffrey Wilton Easley.

08:36:47 6 QUESTION: And you understand that your deposition
08:36:48 7 is being taken today in both your personal capacity and
08:36:51 8 your capacity as a corporate representative for USAA?

08:36:53 9 ANSWER: I understand.

08:36:53 10 QUESTION: And based on your recollection of your
08:37:00 11 notes, when was the first moment in time that you believe
08:37:06 12 mobile devices had image capture capability?

08:37:08 13 ANSWER: So I recall as early as 2004, certainly
08:37:18 14 mobile devices having digital cameras associated with them
08:37:27 15 or linked to them or part of their form factor.

08:37:31 16 QUESTION: Any particular brand of phone that you
08:37:36 17 recall having a digital camera in 2004?

08:37:40 18 ANSWER: I recall Nokia was the big player at the
08:37:43 19 time having -- having those devices. I think there were
08:37:48 20 others, but I don't recall which brands.

08:37:51 21 QUESTION: And then in terms of the scanners, what
08:37:55 22 is your recollection of the first time your members had
08:37:59 23 access to scanners?

08:38:00 24 ANSWER: I know at the time in 2005, and 2004, as
08:38:06 25 we were developing these capabilities, that in general,

08:38:15 1 desktop scanners were very prevalent in the market, highly
08:38:26 2 adopted by our members. And I know that was the beginning
08:38:26 3 of sort of smartphone development, smartphone -- I guess
08:38:31 4 I'm using the term to mean capabilities such as, you know,
08:38:36 5 cameras included on a mobile device and -- and other
08:38:39 6 software developments at the time.

08:38:41 7 As I recall, we saw that desktop scanners were
08:38:49 8 much more prevalent than -- in terms of members who
08:38:54 9 actually had them in their possession and used them in
08:38:57 10 terms of -- as opposed to the prevalence of a large number
08:39:01 11 of smartphones in their possession.

08:39:03 12 QUESTION: So let's go back to your comment about
08:39:09 13 fraud detection. What are some of the fraud detection
08:39:13 14 features in USAA's remote deposit capture product?

08:39:20 15 ANSWER: Some of the features are MICR line
08:39:31 16 validation or magnetic ink character recognition
08:39:33 17 validation, which are the numbers at the bottom of the
08:39:37 18 check written in special font.

08:39:41 19 Certainly validation in terms of valid routing
08:39:46 20 number or check -- check digit logic and those kinds of
08:39:50 21 things.

08:39:50 22 Able to read that successfully for -- for
08:39:56 23 processing purposes with high accuracy, even though the
08:40:01 24 magnetic line, of course, is magnetically read when the
08:40:07 25 physical check item itself is -- is available. But in this

08:40:11 1 case, this capability meant having to achieve high accuracy
08:40:16 2 through reading it optically through a digital image. So
08:40:23 3 that's one of the validations.

08:40:25 4 QUESTION: And in terms of Deposit@Mobile, when
08:40:30 5 did USAA first implement the ability or feature to read the
08:40:36 6 MICR line?

08:40:37 7 ANSWER: When we developed the original remote
08:40:44 8 deposit capture capabilities, the first product was
08:40:48 9 Deposit@Home because some of the earlier comments, that's
08:40:52 10 what most members had in their homes was a desktop scanner.

08:40:56 11 However, the capabilities that allowed us to also
08:41:01 12 launch Deposit@Mobile with a mobile device were already in
08:41:05 13 place and contemplated back in the original product.

08:41:08 14 So I'm separating sort of product in terms of how
08:41:12 15 we communicated the service to you as a member and what
08:41:16 16 capabilities we had in place in order to provide -- provide
08:41:19 17 that service or that -- fulfill that product on the back
08:41:22 18 end.

08:41:23 19 So the capabilities, like I mentioned, the MICR
08:41:26 20 detection -- validation, were in place back in 2005, 2006.
08:41:37 21 It's just that from a market and member perspective, there
08:41:41 22 weren't enough phones out there in possession of our
08:41:44 23 members to make it a product, you know, to roll out
08:41:48 24 until -- that really took off mainly credit to the iPhone
08:41:51 25 around 2007.

08:41:52 1 So those same capabilities enabled us to safely
08:41:58 2 and securely operate Deposit@Mobile when the member
08:42:02 3 adoption sort of enabled us to in that time frame.

08:42:08 4 QUESTION: And when did that happen?

08:42:10 5 ANSWER: Deposit@Mobile, I believe, was initially
08:42:13 6 launched in August -- August/September of 2009.

08:42:20 7 Again, same technical capability framework that
08:42:23 8 was also processing the Deposit@Home transactions.

08:42:25 9 QUESTION: And so when Deposit@Mobile was launched
08:42:28 10 in August/September 2009, it had the capability to do MICR
08:42:33 11 line validation?

08:42:35 12 ANSWER: That's correct.

08:42:35 13 QUESTION: But my question was, if I go into a
08:42:38 14 bank branch and I deposit a check through the traditional
08:42:41 15 way, through a brick and mortar branch, banks will do --
08:42:46 16 including USAA -- will do MICR line validation, correct?

08:42:49 17 ANSWER: I believe they will do it in a
08:42:51 18 traditional branch -- batch process sort of at night, batch
08:42:55 19 up all the checks that were presented, run them through
08:42:58 20 high-speed machines that do magnetic -- you know, actual
08:43:02 21 magnetic reading of the physical item. And, yes, I believe
08:43:07 22 those same validations are done. They're just done after
08:43:10 23 the fact, if you will.

08:43:11 24 QUESTION: And not only is the validation done
08:43:17 25 after the deposit is made, but when I make the deposit, the

08:43:21 1 teller actually has to know what my account number is in
08:43:24 2 order to deposit the check amount in my account, correct?

08:43:29 3 ANSWER: That's correct.

08:43:30 4 QUESTION: I'm just saying that if I go into the
08:43:33 5 USAA branch in San Antonio, the typical practice is I have
08:43:36 6 to fill out a deposit slip, correct?

08:43:39 7 ANSWER: Correct.

08:43:39 8 QUESTION: Okay. On that deposit slip, I have to
08:43:41 9 list my account number, my name, and the amount of the
08:43:44 10 deposit, right?

08:43:45 11 ANSWER: I would think so, yes.

08:43:46 12 QUESTION: If I'm depositing a single check, the
08:43:48 13 amount that I'm depositing could be equal to the amount of
08:43:51 14 the check, correct?

08:43:54 15 ANSWER: For it to be a successful transaction,
08:43:55 16 that amount needs to be the same.

08:43:57 17 QUESTION: And what is your understanding of
08:44:03 18 duplicate detection?

08:44:03 19 ANSWER: So the nature of remote deposit capture
08:44:08 20 is that, you know, really when we introduced it for the
08:44:16 21 first time in banking, that we were -- that we understood,
08:44:20 22 the physical check item was not in our possession or the
08:44:24 23 bank's possession.

08:44:26 24 That introduced a new risk by a member who's
08:44:38 25 making a deposit retains the physical check item. That

08:44:41 1 risk really is what we call representment.

08:44:48 2 So if you were so inclined, after you performed
08:44:52 3 your Deposit@Home or Deposit@Mobile transaction in which an
08:44:58 4 image is sent to us of that check, it's -- it's a
08:45:01 5 fraudulent activity. But if you engaged in that, you could
08:45:05 6 conceivably walk down to another bank and deposit that
08:45:10 7 check item again.

08:45:11 8 And so that's what I'm thinking of when we say
08:45:16 9 duplicate check, you know, prevention, meaning not allowing
08:45:20 10 the check to be redeposited for, you know, more than the
08:45:26 11 one time that it's already been, you know, presented for
08:45:29 12 deposit.

08:45:30 13 QUESTION: And when was duplicate detection --
08:45:34 14 when was that feature added to Deposit@Home?

08:45:37 15 ANSWER: My understanding is it was in place at
08:45:42 16 the very beginning.

08:45:43 17 QUESTION: And how about for Deposit@Mobile, when
08:45:47 18 was that feature added?

08:45:48 19 ANSWER: Since it was the same architecture, same
08:45:51 20 processing, it was in place at the very beginning, as well,
08:45:54 21 of that product.

08:45:55 22 QUESTION: Has USAA valued the duplicate detection
08:46:01 23 feature in its Deposit@Home or Deposit@Mobile products?

08:46:06 24 ANSWER: I would say it's of high value, yes.

08:46:09 25 QUESTION: Have you assigned a numerical or

08:46:12 1 monetary value to that feature?

08:46:13 2 ANSWER: I have not, but I would -- I would just
08:46:16 3 say the -- the ability to introduce this without the -- you
08:46:24 4 know, introducing this service without the ability to guard
08:46:27 5 against representment of checks, would have made the
08:46:32 6 service commercially non-viable.

08:46:34 7 The potential for fraud loss there, the potential
08:46:38 8 for reputational damage, the potential for regulatory
08:46:42 9 scrutiny and action to, at worst, shut the service down
08:46:49 10 means in my mind it's an absolutely critical capability
08:46:53 11 that needed to be in place for us to safely introduce the
08:46:56 12 service.

08:46:58 13 QUESTION: In terms of fraud loss, do you know how
08:47:02 14 much duplicate detection saves in terms of fraud loss?

08:47:06 15 ANSWER: I do not have that detail.

08:47:08 16 QUESTION: Has USAA valued -- valued the
08:47:12 17 capability for its RDC capture products to validate the
08:47:22 18 routing number?

08:47:22 19 ANSWER: Not that I'm aware of.

08:47:24 20 QUESTION: And based on your understanding and
08:47:25 21 experience in the industry, other banks were validating
08:47:31 22 routing numbers or had processes to validate routing
08:47:34 23 numbers via a check deposit through a teller at the time
08:47:42 24 remote deposit capture was developed, correct?

08:47:43 25 ANSWER: In the traditional batch processing

08:47:46 1 environment, yes.

08:47:46 2 QUESTION: Does USAA's remote deposit capture
08:47:52 3 product verify or authenticate the identity of the user?

08:47:55 4 ANSWER: As part of user authentication for
08:48:03 5 accessing your accounts at USAA.com or through our mobile
08:48:06 6 app, that also served as a user authentication for the
08:48:12 7 remote deposit capture transaction.

08:48:13 8 QUESTION: Was there identity authentication
08:48:21 9 feature for Deposit@Home?

08:48:23 10 ANSWER: Deposit@Home was introduced on our
08:48:28 11 USAA.com platform, which authenticated any member who
08:48:38 12 wished to access account information or perform account
08:48:42 13 transactions.

08:48:42 14 QUESTION: Has USAA valued the identity
08:48:47 15 authentication feature in its Deposit@Home and
08:48:50 16 Deposit@Mobile products?

08:48:51 17 ANSWER: Not that I'm aware of.

08:48:53 18 QUESTION: And does USAA's remote deposit capture
08:48:56 19 products verify the check amount?

08:48:58 20 ANSWER: We verify -- and this was in from the
08:49:06 21 beginning, as well -- that the amount written on the check,
08:49:10 22 the numeric amount is read and verified that it matches the
08:49:16 23 amount that the user, the member, has typed into the
08:49:22 24 deposit amount field as part of the application.

08:49:24 25 QUESTION: And when you say "was at the

08:49:38 1 beginning," what do you mean by "was at the beginning"?

08:49:40 2 ANSWER: At the beginning of our remote deposit
08:49:44 3 capture products, which started with Deposit@Home. So that
08:49:46 4 was in place at the beginning of Deposit@Home. Then, of
08:49:51 5 course, remained in place and enabled us to also introduce
08:49:55 6 Deposit@Mobile.

08:49:55 7 QUESTION: Has USAA valued amount verification in
08:50:03 8 its remote deposit capture product?

08:50:05 9 ANSWER: Not that I'm aware of.

08:50:07 10 QUESTION: And going back to the example that we
08:50:14 11 keep going back to, if a -- if a person goes into a -- or
08:50:18 12 the USAA branch in San Antonio to deposit a check, they
08:50:21 13 have to fill out a deposit slip. Are there processes by
08:50:26 14 which the amount on the deposit slip is compared and
08:50:29 15 matched with the amount on the check?

08:50:30 16 ANSWER: I believe there are, again, as part of
08:50:35 17 the batch process, not an on demand process. I would also
08:50:40 18 think -- don't have detailed knowledge -- that also the
08:50:44 19 teller is able to look at what you wrote in your deposit
08:50:47 20 slip and what's on the check to -- to make a correction at
08:50:52 21 that point.

08:50:53 22 QUESTION: And the teller's visual check, plus the
08:51:02 23 batch processes, those were in place prior to remote
08:51:06 24 deposit capture being developed by USAA, correct?

08:51:09 25 ANSWER: In the batch environment, correct.

08:51:13 1 QUESTION: Mr. Easley, I'm handing you what's been
08:51:16 2 marked as Exhibit 3. It's an article from the New York
08:51:19 3 Times entitled, Bank Will Allow Customers to Deposit Checks
08:51:23 4 By iPhone.

08:51:24 5 Do you see that?

08:51:24 6 ANSWER: I see that.

08:51:25 7 QUESTION: What's the date on that article?

08:51:27 8 ANSWER: The date is August 9th, 2009.

08:51:29 9 QUESTION: Do you know Wayne Peacock?

08:51:32 10 ANSWER: I do.

08:51:35 11 QUESTION: It says here he's the USAA executive
08:51:38 12 vice president; is that correct?

08:51:39 13 ANSWER: That's correct.

08:51:39 14 QUESTION: Or at least was at the time in 2009?

08:51:42 15 ANSWER: That's correct.

08:51:42 16 QUESTION: Is Mr. Peacock still with USAA?

08:51:46 17 ANSWER: He is still with USAA.

08:51:48 18 QUESTION: And what is his position currently?

08:51:50 19 ANSWER: He's the president of our property and
08:51:53 20 casualty company.

08:51:54 21 QUESTION: Over the -- over your tenure at USAA,
08:52:05 22 did you have occasion to work with Mr. Peacock?

08:52:07 23 ANSWER: I have, yes.

08:52:08 24 QUESTION: Do you find him competent?

08:52:10 25 ANSWER: I do.

08:52:11 1 QUESTION: On the first page, Mr. Peacock is
08:52:32 2 quoted as saying: We're essentially taking an image of a
08:52:36 3 check, and once you hit the send button, that image is
08:52:39 4 going into your deposit-taking system as any other check
08:52:42 5 would.

08:52:43 6 Do you see that?

08:52:44 7 ANSWER: I see it.

08:52:45 8 QUESTION: Is Mr. Peacock talking about the remote
08:52:47 9 deposit capture feature for USAA or product?

08:52:48 10 ANSWER: He is.

08:52:52 11 QUESTION: If you go to the second page, it's the
08:52:56 12 third paragraph down, Mr. Peacock is quoted as saying:
08:53:04 13 Mobile is going to be a bigger part of how people do
08:53:07 14 commerce and how they interact with our financial
08:53:09 15 institutions. The great value that we see is the time
08:53:11 16 savings.

08:53:13 17 Do you see that?

08:53:14 18 ANSWER: I do see that.

08:53:16 19 QUESTION: Do you agree with Mr. Peacock as of
08:53:18 20 2009, the great value to remote deposit capture is through
08:53:22 21 time savings?

08:53:24 22 ANSWER: What I believe he meant was saving our
08:53:30 23 members' time by not having to drive to a bank branch to
08:53:37 24 make a deposit.

08:53:38 25 QUESTION: And do you agree with that?

08:53:39 1 ANSWER: I do.

08:53:40 2 QUESTION: And Mr. Peacock didn't mention anything
08:53:45 3 about fraud, did he, when he's talking about the great
08:53:47 4 value of the product?

08:53:48 5 ANSWER: Again, I believe he's referring to value
08:53:53 6 to our members only.

08:53:55 7 QUESTION: So in the paragraph I just read to you,
08:53:58 8 the ability reduced the potential of fraud is in the
08:54:00 9 context of customer eligibility, correct?

08:54:03 10 ANSWER: I think it's "in the context of" that's
08:54:09 11 throwing me. So that's my qualification, which is
08:54:16 12 introducing it to members of creditworthiness and insurance
08:54:24 13 members, as it's stated, is a way to reduce the potential
08:54:28 14 of fraud.

08:54:29 15 QUESTION: So the methods that potentially reduce
08:54:35 16 fraud that we talked about earlier, MICR line validation,
08:54:44 17 you know, account number authentication, identity
08:54:46 18 verification, all those features, none of those are
08:54:51 19 mentioned in this article; is that right?

08:54:52 20 ANSWER: They're not mentioned in this article.

08:54:54 21 QUESTION: Any other things outside of the context
08:54:56 22 of mobile deposit check deposit that you can think of to
08:54:59 23 help reduce fraud for USAA?

08:55:01 24 ANSWER: I would think your standard industry
08:55:03 25 practices are at play. I'm just not --

08:55:05 1 QUESTION: Can you give me some examples?

08:55:07 2 ANSWER: So there are fraud prevention services
08:55:23 3 that have existed that are -- I don't know the proper term,
08:55:33 4 but where -- services are provided where bank customers may
08:55:38 5 have defrauded or taken other banks for a loss. Their
08:55:44 6 information is collected and provided for a service to
08:55:48 7 banks as sort of the feed into their risk profile systems.

08:55:55 8 So -- so banks know if you have caused a lot of
08:55:58 9 damage somewhere else, your name and Social Security number
08:56:02 10 could be provided through a service as a -- as a way for
08:56:06 11 you to -- the customer bank of that service to know whether
08:56:10 12 this is a higher-risk profile than someone else. But
08:56:14 13 that's the example I can think of.

08:56:16 14 QUESTION: And a -- and a high-risk profile
08:56:19 15 meaning to -- to extend a loan or allow you to open an
08:56:24 16 account up?

08:56:25 17 ANSWER: That's correct.

08:56:26 18 QUESTION: Okay. Are there also mechanisms by
08:56:29 19 which a customer, or -- strike that.

08:56:33 20 Are there also mechanisms by which the bank use to
08:56:40 21 screen -- to screen the customer before they're given a
08:56:43 22 loan or open an account to make sure that they're going to
08:56:47 23 be trustworthy?

08:56:49 24 ANSWER: It depends on the product line, but,
08:56:55 25 effectively, lending products, credit cards, loans will

08:57:00 1 typically have an underwriting department for that purpose.

08:57:05 2 QUESTION: What about a checking account?

08:57:07 3 ANSWER: Many banks do. I don't know that all

08:57:13 4 banks do, depending on their size and risk profiles.

08:57:18 5 QUESTION: What about USAA?

08:57:19 6 ANSWER: At the time of our remote deposit capture

08:57:24 7 products, I would say roughly 2000 -- in terms of offering

08:57:31 8 to members, 2006 through 2012, 2013, we developed a much

08:57:40 9 more robust deposits underwriting system that allowed us to

08:57:45 10 expand eligibility for the service well past where

08:57:49 11 Mr. Peacock mentioned in 2009.

08:57:58 12 QUESTION: What about things like minimum

08:58:00 13 balances? Does a minimum balance help prevent fraud?

08:58:06 14 ANSWER: My experience was, minimum balance was a

08:58:12 15 typical product construct which we did not employ to

08:58:19 16 encourage use of the account versus just keeping a -- a

08:58:23 17 shell account open.

08:58:24 18 Could that reduce fraud? I think it has a

08:58:32 19 potential, but I think the primary purpose was to reduce

08:58:35 20 inactive accounts and reduce -- you know, potentially

08:58:38 21 reduce just losses, as well.

08:58:41 22 QUESTION: What about a maximum withdrawal limit

08:58:48 23 on a checking account? Does USAA have those?

08:58:50 24 ANSWER: USAA does have transaction limits in

08:58:52 25 place, yes.

08:58:52 1 QUESTION: For checking accounts?

08:58:53 2 ANSWER: For checking accounts.

08:58:54 3 QUESTION: Does that reduce fraud?

08:58:55 4 ANSWER: It can -- it helps reduce fraud, yes. Or
08:59:07 5 fraud losses, effectively.

08:59:10 6 QUESTION: But just -- can you make a comparison
08:59:13 7 of the value of those fraud-reducing features that we
08:59:19 8 talked about earlier with making it easier for customers to
08:59:21 9 do banking? Which one is more valuable, in your view?

08:59:25 10 ANSWER: I don't know that's a valid comparison
08:59:39 11 because no bank, even if they wanted to, can offer a
08:59:42 12 service that is unsafe and unsound.

08:59:45 13 The other side of it, the value to the customer is
08:59:52 14 implied by the product itself. So I just see those as two
09:00:00 15 different dimensions.

09:00:02 16 QUESTION: Has USAA done any studies or
09:00:04 17 comparisons or comparative value analysis of its
09:00:08 18 fraud-reducing features that we discussed, compared to any
09:00:13 19 other features in the asserted patents?

09:00:16 20 ANSWER: Not that I'm aware of.

09:00:21 21 QUESTION: Are the fraud-reducing features in the
09:00:24 22 asserted patents more or less valuable than reducing costs
09:00:27 23 for the bank?

09:00:29 24 ANSWER: The fraud prevention features, as I call
09:00:45 25 them table stakes, are required to operate the service.

09:00:51 1 Without those features, the service, in my -- my view,
09:00:56 2 cannot be operated. So that's what I mean by table stakes.

09:01:02 3 QUESTION: Are you aware if anyone has taken a
09:01:05 4 license to USAA's patent portfolio?

09:01:07 5 ANSWER: I am not aware.

09:01:08 6 QUESTION: So prior to October 2006 when this --
09:01:17 7 when this email was written, which is Exhibit 5 to your
09:01:21 8 previous deposition, are you aware of a check deposit using
09:01:25 9 RDC capture via a camera?

09:01:28 10 ANSWER: I'm not aware of a successful, what I
09:01:39 11 call live money deposits, prior to that period.

09:01:42 12 QUESTION: Are you aware of a successful use of a
09:01:44 13 camera to capture an image that could be processed by the
09:01:48 14 RDC product at USAA prior to October -- prior to October of
09:01:57 15 2006?

09:01:58 16 ANSWER: I'm not specifically aware whether we --
09:02:00 17 that team did that or not.

09:02:02 18 QUESTION: But as we talked about before,
09:02:04 19 duplicate detection, amount verification, endorsement
09:02:06 20 checking, customer authentication, those are all things
09:02:10 21 done either via the teller or through some back end process
09:02:17 22 at the time of the asserted inventions?

09:02:21 23 ANSWER: Yes. And relied -- that process relied
09:02:27 24 upon physical possession of the check item.

09:02:30 25 QUESTION: Do you have any understanding or belief

09:02:34 1 as to whether Wells Fargo copied USAA's remote deposit
09:02:39 2 technology?

09:02:40 3 ANSWER: I don't have a -- I'm not aware if they
09:02:44 4 did or did not.

09:02:46 5 QUESTION: As you sit here today, you don't have
09:02:48 6 any facts or documents or any other evidence to suggest
09:02:52 7 that Wells Fargo copied USAA's remote deposit capture
09:02:56 8 technology?

09:02:57 9 ANSWER: I think all that we know is just publicly
09:03:04 10 available information in terms of what Wells Fargo offers.
09:03:08 11 It appears to be a very similar service, and I -- I can't
09:03:11 12 speak to whether there was actually copying or not.

09:03:15 13 (Videoclip ends.)

09:03:18 14 THE COURT: Does that complete this witness by
09:03:20 15 deposition?

09:03:21 16 MS. GLASSER: It does, Your Honor.

09:03:22 17 THE COURT: All right. Do you have additional
09:03:23 18 witnesses by deposition?

09:03:24 19 MS. GLASSER: We do.

09:03:25 20 THE COURT: Please proceed.

09:03:26 21 MS. GLASSER: USAA calls Mr. Nathan McKinley, vice
09:03:33 22 president and corporate representative, by deposition.

09:03:49 23 THE COURT: And, Ms. Glasser, this is vice
09:03:51 24 president and corporate representative for?

09:03:53 25 MS. GLASSER: For USAA.

09:03:54 1 THE COURT: Thank you.

09:04:00 2 (Videoclip played.)

09:04:02 3 QUESTION: Good morning. Will you please tell us
09:04:08 4 your name?

09:04:09 5 ANSWER: Good morning. It's Nathan McKinley.

09:04:11 6 QUESTION: Who is your current employer?

09:04:13 7 ANSWER: USAA.

09:04:14 8 QUESTION: What is your current title?

09:04:15 9 ANSWER: Vice president, head of corporate
09:04:21 10 development.

09:04:23 11 Correct.

09:04:23 12 QUESTION: And Zelle is offered by a company
09:04:25 13 that's owned in part by Wells Fargo, correct?

09:04:27 14 ANSWER: It is.

09:04:27 15 QUESTION: And how does Wells Fargo and its
09:04:36 16 co-owners charge USAA for the use of its technology?

09:04:38 17 ANSWER: They charge us a lot. So if a USAA
09:04:44 18 member -- you know, so an E-3 wants to send money to his
09:04:48 19 buddy in -- in Delaware and he happens to be at WSFS or a
09:04:53 20 local bank and he -- and that particular customer is not a
09:04:58 21 member of Zelle, USAA would have to pay 60 cents for that
09:05:02 22 one transaction. And then you start doing the math, and
09:05:06 23 you start having millions and millions of these
09:05:09 24 transactions, it starts to become quite expensive, you
09:05:12 25 know, very quickly for a USAA member to send money to -- to

09:05:15 1 somebody else.

09:05:17 2 (Videoclip ends.)

09:05:19 3 THE COURT: That completes this witness?

09:05:21 4 MS. GLASSER: It does, Your Honor.

09:05:22 5 THE COURT: Call your next witness.

09:05:23 6 MS. GLASSER: USAA calls Mr. Nishant Usapkar,

09:05:34 7 Wells Fargo mobile engineer, by deposition.

09:05:46 8 (Videoclip played.)

09:05:47 9 QUESTION: Good morning. State your name for the

09:05:50 10 record.

09:05:50 11 ANSWER: My name is Nishant Usapkar.

09:05:52 12 QUESTION: What's your position at Wells Fargo,

09:05:53 13 sir?

09:05:53 14 ANSWER: I am an analytics manager at Wells Fargo.

09:05:58 15 QUESTION: Were you involved in Wells Fargo's

09:06:04 16 mobile remote deposit capture program?

09:06:04 17 ANSWER: I was involved with the wholesale Mobile

09:06:09 18 Deposit program.

09:06:14 19 QUESTION: Is the answer to my question "yes" or

09:06:18 20 "no"?

09:06:18 21 ANSWER: Are you talking -- referring to the --

09:06:21 22 there are two programs. One is what is referred to as CEO

09:06:25 23 Mobile, Mobile Deposit program, which is for wholesale

09:06:28 24 customers. Yes, I was involved if that's what your

09:06:31 25 question was. I was not involved with the retail Mobile

09:06:35 1 Deposit program.

09:06:36 2 QUESTION: So approximately in 2007, or
09:06:39 3 thereabouts, the CEO Mobile program became live, fair?

09:06:44 4 ANSWER: CEO Mobile application, yes. CEO, 2007
09:06:47 5 or 2008, I will say between that.

09:06:49 6 QUESTION: And what is the CEO Mobile application?

09:06:51 7 ANSWER: So CEO Mobile application is a mobile
09:06:55 8 channel, you could call it. It's a web-based or mobile app
09:07:01 9 which allows our wholesale customers to be able to carry
09:07:03 10 out their functions, which they typically will do on a
09:07:07 11 desktop-based web application.

09:07:09 12 QUESTION: Is there a mobile device app associated
09:07:13 13 with it?

09:07:13 14 ANSWER: It -- there is now. When the program
09:07:16 15 started initially, it was just a web-based.

09:07:20 16 QUESTION: Now, in terms of -- that was the system
09:07:24 17 that would control the camera to take the picture and
09:07:27 18 acquire the image and input data.

09:07:29 19 What about the systems that evaluated the image,
09:07:36 20 processed the image, who was responsible for that?

09:07:40 21 ANSWER: That was not my team.

09:07:41 22 QUESTION: I understand that, sir. Who was
09:07:42 23 responsible for it?

09:07:43 24 ANSWER: So there was a team which is called
09:07:47 25 Desktop Deposit, which handled the browser-based

09:07:51 1 interaction, right, the web browser application, which was
09:07:55 2 there already, which was called Desktop Deposit. The same
09:07:57 3 team managed the back end.

09:08:00 4 QUESTION: Desktop Deposit was the system that
09:08:04 5 allows you to deposit checks using your desktop, correct?

09:08:07 6 ANSWER: That's correct, yeah. You need to have a
09:08:11 7 scanner. At that time, it was called a Panini scanner. At
09:08:16 8 that time, at least, they needed a scanner to scan the
09:08:18 9 checks.

09:08:19 10 QUESTION: So you were tasked with developing a
09:08:21 11 system to acquire images of checks for the Mobile CEO [sic]
09:08:27 12 platform, fair?

09:08:28 13 ANSWER: My team, yes.

09:08:29 14 QUESTION: And Wells Fargo, before the point where
09:08:32 15 you were tasked with that in 2010/2011, had no historical
09:08:40 16 mobile app that was acquiring images, fair?

09:08:42 17 ANSWER: Not to my knowledge. We were the first
09:08:46 18 team in Wells Fargo which did build a mobile app. There
09:08:51 19 were, obviously, a lot of desktop-based check image, but if
09:08:55 20 I remember correctly, wholesale was the first team in Wells
09:08:59 21 Fargo to build a mobile check capture.

09:09:01 22 QUESTION: Check 21 is what motivated your team or
09:09:06 23 Wells Fargo to begin to develop mobile image acquisition;
09:09:13 24 is that correct?

09:09:13 25 ANSWER: I won't frame it that way. Check 21

09:09:17 1 happened long time back. I don't even remember when Check
09:09:21 2 21 was done. That was not -- it was just something which
09:09:24 3 enabled all banks to do it. So that was not the driving
09:09:28 4 factor.

09:09:29 5 QUESTION: Okay. So Check 21 was not the driving
09:09:31 6 factor for the mobile development program?

09:09:34 7 ANSWER: I won't say that was the only driving
09:09:36 8 factor.

09:09:37 9 QUESTION: Okay. And, in fact, Check 21 was
09:09:39 10 passed many years before Wells Fargo became inspired to
09:09:42 11 create mobile device image capture in 2010 and 2011, fair?

09:09:47 12 ANSWER: Check 21 was passed some years back. I
09:09:51 13 don't know the exact date when it was passed.

09:09:53 14 QUESTION: Did the consumer mobile development
09:09:57 15 take advantage of the wholesale development?

09:10:01 16 ANSWER: Yeah, so at that time, they were -- and I
09:10:15 17 don't know how the team is now, but wholesale and consumer
09:10:18 18 were totally different tech teams supporting two totally
09:10:22 19 different organizations. So we didn't interact much with
09:10:25 20 that team.

09:10:25 21 QUESTION: When you were developing your mobile
09:10:29 22 check deposit app, did you examine mobile check deposit
09:10:35 23 apps of any other companies?

09:10:36 24 ANSWER: No, I did not.

09:10:38 25 QUESTION: Now, you stated that in 2008 or

09:10:44 1 thereabouts, the first iPhone came into existence, fair
09:10:49 2 point?

09:10:50 3 ANSWER: 2008? That's what I remember, 2008,
09:10:53 4 right. That's when iOS was launched, or 2007, one of those
09:10:57 5 years.

09:10:57 6 QUESTION: Did you ask any members of your team to
09:11:00 7 investigate whether it violated any other company's
09:11:04 8 intellectual property?

09:11:04 9 ANSWER: I don't remember asking any of my
09:11:06 10 developers to do that kind of thing.

09:11:08 11 QUESTION: In other words, to be clear, what you
09:11:11 12 did is -- the iPhone, before you developed your specialized
09:11:18 13 software for mobile check deposit, was just a general
09:11:23 14 purpose camera with a general purpose computer, correct?

09:11:25 15 ANSWER: The iPhone is a general purpose computer,
09:11:30 16 yes.

09:11:31 17 QUESTION: And it has a general purpose camera on
09:11:34 18 it, correct?

09:11:34 19 ANSWER: Yeah, any mobile device will have a
09:11:38 20 general purpose camera on it, that's right.

09:11:40 21 (Videoclip ends.)

09:11:40 22 THE COURT: Does that complete this witness,
09:11:42 23 counsel?

09:11:42 24 MS. GLASSER: It does, Your Honor.

09:11:43 25 THE COURT: Call your next witness.

09:11:47 1 MS. GLASSER: USAA calls Ms. Margot
09:11:51 2 Lockwood-Stein, corporate representative for Wells Fargo.
09:11:54 3 This testimony will be presented in part by video
09:11:57 4 deposition, and then there was a portion of testimony that
09:12:00 5 was not videoed, which will be read into the record.
09:12:03 6 THE COURT: All right. Proceed. We'll begin with
09:12:08 7 the video portion.
09:12:10 8 (Videoclip played.)
09:12:11 9 QUESTION: Good morning, ma'am. Can you state
09:12:13 10 your full name for the record?
09:12:13 11 ANSWER: Sure. It's Margot Lockwood-Stein.
09:12:17 12 QUESTION: Are you employed at Wells Fargo?
09:12:18 13 ANSWER: Yes, I am.
09:12:19 14 QUESTION: How long have you been involved with
09:12:23 15 mobile remote deposit capture at Wells Fargo?
09:12:24 16 ANSWER: So I have been working on mobile remote
09:12:32 17 deposit capture since -- for a long time. I -- I started
09:12:38 18 looking at mobile remote deposit capture when I was
09:12:41 19 managing the desktop deposit product team and digital
09:12:46 20 payments.
09:12:48 21 QUESTION: When did -- when were you managing the
09:12:51 22 desktop deposit team?
09:12:53 23 ANSWER: I managed the desktop deposit team for --
09:12:58 24 from October 2008 until May of 2010.
09:13:04 25 QUESTION: You understand that USAA is a financial

09:13:09 1 institution that serves the military and their family,
09:13:12 2 correct?

09:13:12 3 ANSWER: Yes.

09:13:13 4 QUESTION: In March of 2010, Wells Fargo had no
09:13:19 5 mobile remote deposit capture system that was available for
09:13:23 6 retail customers, correct?

09:13:24 7 ANSWER: So I -- I can't say what the definition
09:13:31 8 of mobile remote deposit capture was in March of 2010. I
09:13:41 9 can tell you that I worked on the -- the desktop deposit
09:13:44 10 service, and, you know, when I would -- would be testing
09:13:51 11 the product, I would bring the scanner with me to work to
09:13:55 12 test it, at home to test it.

09:13:58 13 So I don't -- I don't really know what the
09:14:01 14 definition was at that time, but looking at the definition
09:14:05 15 today of, you know, mobile -- my -- my definition of a
09:14:12 16 mobile remote deposit capture system would be with a
09:14:14 17 smartphone, but I -- I don't know what the definition was
09:14:17 18 at the time.

09:14:18 19 QUESTION: So your testimony is you don't know
09:14:20 20 what the definition of mobile remote deposit capture meant
09:14:22 21 in March of 2010, fair?

09:14:26 22 ANSWER: Yeah. That's correct.

09:14:27 23 QUESTION: And -- and you wrote a document in
09:14:29 24 March of 2010 entitled Mobile Remote Deposit Capture, fair?

09:14:34 25 ANSWER: I don't recall what my context was at

09:14:42 1 that time. It's -- it's been several years, so I can't
09:14:44 2 recall what the context was in 2010. I don't recall what
09:14:51 3 smartphones were available. I don't recall, you know, what
09:14:53 4 other mobile devices were available. So I -- I don't
09:14:56 5 recall that context, yeah.

09:14:57 6 QUESTION: Exhibit 7 is a Wells Fargo document
09:15:02 7 entitled Mobile Remote Deposit Capture, dated March 2010,
09:15:07 8 correct?

09:15:07 9 ANSWER: That's correct.

09:15:11 10 QUESTION: You're listed as one of the two
09:15:14 11 preparers of this document, correct?

09:15:16 12 ANSWER: That's correct.

09:15:16 13 QUESTION: In fact, you're listed as the first of
09:15:19 14 the two, correct?

09:15:20 15 ANSWER: That's correct.

09:15:20 16 QUESTION: And at that time and in this document,
09:15:25 17 the only commercial bank mobile remote deposit capture
09:15:31 18 system that you direct the reader to is USAA's system,
09:15:36 19 correct?

09:15:36 20 ANSWER: So as I look at this document today and
09:15:39 21 as -- having skimmed it, it appears that USAA is the only
09:15:45 22 other bank that is mentioned in this document.

09:15:48 23 QUESTION: And when you were exploring the
09:15:54 24 potential for mobile remote deposit technology, you never
09:16:00 25 contacted USAA, correct?

09:16:01 1 ANSWER: That's correct.

09:16:01 2 QUESTION: You never asked anyone to do a patent
09:16:03 3 search on USAA's patents, correct?

09:16:05 4 ANSWER: I don't recall any. I don't recall that.

09:16:13 5 (Videoclip ends.)

09:16:16 6 THE COURT: All right. Ms. Glasser, you want to
09:16:17 7 proceed with the remainder of this witness by deposition?

09:16:20 8 MS. GLASSER: Yes, thank you, Your Honor.

09:16:30 9 QUESTION: And so what we see here is that from
09:16:32 10 the very, very beginning, when mobile deposit was being
09:16:36 11 first considered at Wells Fargo, Wells Fargo recognized
09:16:39 12 that it could have key benefits, correct?

09:16:43 13 ANSWER: That's right. There were projected
09:16:46 14 benefits at the time.

09:16:47 15 QUESTION: And the key benefits included cost
09:16:53 16 savings, correct?

09:16:53 17 ANSWER: That's what's shown on the -- the
09:16:57 18 document, that's right.

09:16:58 19 QUESTION: And they also included that MRDC would
09:17:05 20 improve retention and share of wallet, correct?

09:17:08 21 ANSWER: That was what was in the document and
09:17:11 22 projected at the time, yes.

09:17:12 23 QUESTION: And, in fact, Wells Fargo anticipated,
09:17:17 24 as well, that there would be a customer wow factor, that
09:17:23 25 having this type of technology would cause Wells Fargo to

09:17:26 1 appear to be a leadership or an innovator, a leadership and
09:17:31 2 innovation company in the eyes of its customers, correct?

09:17:34 3 ANSWER: That's right. That was what was
09:17:37 4 projected at the time.

09:17:38 5 QUESTION: And this was projected way back in
09:17:42 6 2010, and ultimately all of those things proved to be the
09:17:45 7 case, correct?

09:17:46 8 ANSWER: No, I would disagree.

09:17:50 9 QUESTION: Let's -- let's turn to the cost savings
09:17:54 10 information.

09:17:55 11 You do acknowledge that Wells Fargo has enjoyed
09:17:59 12 fairly substantial cost savings from the accused product,
09:18:03 13 correct?

09:18:03 14 ANSWER: I do.

09:18:06 15 QUESTION: And, in fact, in the year 2018 alone,
09:18:11 16 Wells Fargo processed 60 million checks just through Mobile
09:18:19 17 Deposit, correct?

09:18:19 18 ANSWER: Yes, that's approximately right.

09:18:21 19 QUESTION: Can you look at Exhibit 28, PX-28?

09:18:31 20 And this was a document that you put together and
09:18:34 21 produced in this case, correct?

09:18:36 22 ANSWER: Yes, yes, it is.

09:18:40 23 QUESTION: And so if we go to the 2018 column as
09:18:48 24 an example, we see that in 2018, in total costs, Wells
09:18:57 25 Fargo incurred more than \$2.75 every single time a consumer

09:19:01 1 deposited a check at a teller; is that right?

09:19:04 2 ANSWER: That's correct.

09:19:08 3 QUESTION: And when a consumer deposited a check
09:19:11 4 through an ATM, the number was \$1.58, a little bit more
09:19:17 5 than that, correct?

09:19:18 6 ANSWER: That's correct.

09:19:18 7 QUESTION: So when we look at those compared to
09:19:27 8 Mobile Deposit, which was about 35 cents, correct --

09:19:30 9 ANSWER: Yes, that's right.

09:19:31 10 QUESTION: -- we can see that every single time a
09:19:36 11 consumer is depositing one of those 60 million checks in
09:19:39 12 2018, they're saving Wells Fargo at least a dollar,
09:19:44 13 correct?

09:19:44 14 ANSWER: Yes, that's right.

09:19:47 15 QUESTION: And, in fact, there -- it's most likely
09:19:53 16 more than that because the teller ones are quite a bit more
09:19:56 17 expensive, correct?

09:19:57 18 ANSWER: Well, it depends on the split, but, yes.
09:20:02 19 The teller ones are definitely more expensive.

09:20:05 20 QUESTION: And so when we're talking about
09:20:08 21 60 million mobile deposits per year, even just 1 or \$2.00
09:20:16 22 per check, it adds up to a pretty large number, correct?

09:20:19 23 ANSWER: Yes, it does.

09:20:20 24 QUESTION: And, specifically, it adds up to
09:20:23 25 somewhere between 60 and \$120 million just for 2018,

09:20:30 1 correct?

09:20:30 2 ANSWER: Yes, that's correct.

09:20:35 3 (Videoclip ends.)

09:20:35 4 THE COURT: That completes the testimony of this
09:20:38 5 witness?

09:20:39 6 MS. GLASSER: It does, Your Honor.

09:20:40 7 THE COURT: Do you have additional deposition
09:20:41 8 witnesses to present?

09:20:42 9 MS. GLASSER: No, Your Honor.

09:20:43 10 THE COURT: All right. Plaintiff, call your next
09:20:50 11 witness.

09:20:50 12 MR. SHEASBY: Your Honor, Plaintiff rests its
09:20:53 13 case.

09:20:53 14 THE COURT: All right. Plaintiff has rested its
09:20:58 15 case-in-chief.

09:20:59 16 We'll proceed to take up Defendant's
09:21:01 17 case-in-chief.

09:21:01 18 Is Defendant prepared to call its first witness?

09:21:03 19 MR. MELSHEIMER: We are, Your Honor.

09:21:04 20 THE COURT: Please do.

09:21:05 21 MR. MELSHEIMER: Your Honor, the Defendant calls
09:21:08 22 Mr. Al Hecht.

09:21:09 23 THE COURT: All right. Mr. Hecht, if you'll come
09:21:15 24 forward and be sworn, please?

09:21:17 25 (Witness sworn.)

09:21:18 1 THE COURT: Please come around, sir, and have a
09:21:28 2 seat on the witness stand.

09:21:37 3 MR. MELSHEIMER: Your Honor, may I approach the
09:21:40 4 Courtroom Security Officer to hand the witness a binder?

09:21:42 5 THE COURT: You may approach.

09:21:51 6 Are there other copies to distribute? Let's do
09:21:54 7 that.

09:21:54 8 MR. MELSHEIMER: Yes, Your Honor. May I?

09:22:02 9 THE COURT: All right. Counsel, you may proceed
09:22:03 10 when you're ready.

09:22:04 11 MR. MELSHEIMER: May it please the Court.

09:22:04 12 AL HECHT, DEFENDANT'S WITNESS, SWORN

09:22:04 13 DIRECT EXAMINATION

09:22:05 14 BY MR. MELSHEIMER:

09:22:05 15 Q. Mr. Hecht, good morning.

09:22:12 16 A. Good morning.

09:22:13 17 Q. Would you please introduce yourself to the ladies and
09:22:17 18 gentleman of the jury?

09:22:18 19 A. Yes, my name is Al Hecht.

09:22:20 20 Q. Where are you employed, Mr. Hecht?

09:22:22 21 A. I work for Wells Fargo Bank.

09:22:24 22 Q. What is your title at Wells Fargo?

09:22:26 23 A. I'm a senior vice president at Wells Fargo.

09:22:30 24 Q. Are you serving as Wells Fargo's corporate
09:22:35 25 representative during this jury trial?

09:22:36 1 A. Yes, I am.

09:22:37 2 Q. Can you tell the jury your understanding of what that
09:22:39 3 means?

09:22:39 4 A. I'm representing both myself and I'm also representing
09:22:43 5 Wells Fargo Bank.

09:22:45 6 Q. How long, sir, have you worked in the banking business
09:22:48 7 as a whole?

09:22:48 8 A. Over 30 years.

09:22:53 9 Q. Since about 1985?

09:22:55 10 A. That's correct, sir.

09:22:56 11 Q. Let's start out with a little bit about your
09:22:59 12 background. Would you tell the jury a little bit about
09:23:01 13 yourself personally, sir?

09:23:02 14 A. Sure. I live in California. I am married. I've been
09:23:06 15 married for 30 years. I have two children, a 27-year-old
09:23:10 16 boy and a 22-year-old daughter.

09:23:13 17 Q. Where were you born and raised, sir?

09:23:15 18 A. I was born in Pittsburgh, Pennsylvania.

09:23:18 19 Q. Big family or small family?

09:23:21 20 A. A pretty large family.

09:23:22 21 Q. What did your parents do for work?

09:23:24 22 A. My parents -- my mother was a waitress, and my father
09:23:28 23 was a bus driver.

09:23:29 24 Q. Did you go to college, Mr. Hecht?

09:23:31 25 A. Yes, I did.

09:23:32 1 Q. Where did you go to college?

09:23:33 2 A. I went to Clarion University in Pennsylvania.

09:23:37 3 Q. Did you pay your own way to college?

09:23:40 4 A. Yes, I did. I paid my whole way through college.

09:23:42 5 Q. When did you graduate?

09:23:43 6 A. I graduated in 1985.

09:23:46 7 Q. What type of degree did you graduate with, sir?

09:23:49 8 A. I graduated with a degree in computer science.

09:23:52 9 Q. What is computer science?

09:23:54 10 A. Computer science is the study of the science of the

09:23:58 11 computer, as well as it's -- it's strongly based in math.

09:24:03 12 Q. Are you good at math?

09:24:04 13 A. Yes, I like math a lot.

09:24:05 14 Q. Is that why you got into computer science?

09:24:07 15 A. Yes, it is.

09:24:08 16 Q. Do you know how to write what we've heard in this trial

09:24:11 17 as source code?

09:24:11 18 A. Yes, I do.

09:24:13 19 Q. What is source code?

09:24:14 20 A. Source code is the code that controls the computer.

09:24:19 21 Q. What sort of source code languages can you read, write,

09:24:25 22 and understand?

09:24:25 23 A. It's a long list. I can write in Fortran, Pascal,

09:24:29 24 COBOL, Assembler, C, C++, C#, and SAS and Java and

09:24:39 25 JavaScript.

09:24:39 1 Q. Mr. Hecht, have you helped me prepare some slides to
09:24:43 2 illustrate some points of your testimony for the jury?

09:24:45 3 A. Yes, I have, sir.

09:24:46 4 Q. Do we have a slide here that summarizes your employment
09:24:51 5 and professional background?

09:24:51 6 A. Yes, we do.

09:24:56 7 Q. Did you get a job after graduating from college with a
09:24:59 8 computer science degree in 1985?

09:25:01 9 A. Yes, I did.

09:25:02 10 Q. Where did you go to work?

09:25:03 11 A. I went for -- I went to work for Mellon Bank in
09:25:08 12 Pittsburgh, Pennsylvania.

09:25:08 13 Q. What did you do for Mellon Bank?

09:25:10 14 A. I was a computer programmer on mainframe systems
09:25:14 15 developing a check processing system.

09:25:15 16 Q. Did your work at Mellon Bank involve what we've called
09:25:18 17 check imaging?

09:25:19 18 A. Yes, it did.

09:25:20 19 Q. How did your work in 1985 involve check imaging?

09:25:24 20 A. We were actually one of the first in the country to
09:25:29 21 capture check images in the process of our check processing
09:25:32 22 system.

09:25:33 23 Q. Did you, in fact, build a check processing image system
09:25:37 24 from scratch for Mellon Bank?

09:25:40 25 A. Yes, we did, sir. We actually were charged to build on

09:25:45 1 our own system and wrote a system -- a brand new system
09:25:49 2 from scratch.

09:25:49 3 Q. Did that work involve working with any check imaging
09:25:53 4 machines, and is one shown on the slide?

09:25:55 5 A. Yes. It involved -- if you look on the slide on the
09:26:02 6 bottom left, that's called an IBM 3890 sorter. It involved
09:26:09 7 controlling that sorter to process checks.

09:26:09 8 Q. Are these big machines, sir?

09:26:11 9 A. Yes, they're very large machines. They take up a whole
09:26:14 10 room.

09:26:14 11 Q. Are they called reader/sorters?

09:26:17 12 A. Yes, sir, they're called reader/sorters.

09:26:20 13 Q. Tell the jury, what is the reader part?

09:26:22 14 A. Well, if you -- if you look to the left-hand side, the
09:26:25 15 images are put into a hopper, and they're actually -- on
09:26:27 16 the left-hand side, it reads the checks, and that's the
09:26:30 17 reader part of the reader/sorter.

09:26:32 18 Q. What is being read?

09:26:34 19 A. We read the MICR line, and then ultimately we'd capture
09:26:37 20 the image. Those are the types of things that we'd read on
09:26:41 21 the -- on the right -- on the left-hand side of the
09:26:44 22 picture. That's what the reader is.

09:26:45 23 Q. You say MICR line. Does that stand for magnetic image
09:26:50 24 character recognition?

09:26:50 25 A. Magnetic ink character recognition.

09:26:54 1 Q. Ink? Thank you, Mr. Hecht.

09:26:57 2 Which part is the sorter part of the
09:27:01 3 reader/sorter?

09:27:02 4 A. The sorter part -- if you look, there's pockets on the
09:27:05 5 left there that go all the way down the machine, and we
09:27:08 6 would sort the checks into those pockets.

09:27:10 7 Q. How long did you work at Mellon Bank, sir?

09:27:12 8 A. I worked there for five years.

09:27:14 9 Q. Where did you work after Mellon Bank?

09:27:16 10 A. I went to IBM to work at IBM.

09:27:20 11 Q. What did you do for IBM?

09:27:22 12 A. I worked on a system at IBM called CPCS that was
09:27:27 13 basically the check processing control system that actually
09:27:31 14 controlled these sorters.

09:27:32 15 Q. Is IBM the same company that made these reader/sorter
09:27:36 16 machines that you have in front of the jury?

09:27:38 17 A. It is. They made the sorters and the software.

09:27:40 18 Q. What role did the software that you worked on play with
09:27:47 19 these big machines?

09:27:48 20 A. Yes, it was the controlling software that many banks in
09:27:51 21 the country were using to control these machines.

09:27:52 22 Q. Is that called CPCS?

09:27:56 23 A. Yes, sir, it is.

09:27:57 24 Q. Does that stand for check processing control system?

09:27:59 25 A. Yes, that's exactly what it is.

09:28:01 1 Q. What did that software do?

09:28:02 2 A. Again, it -- it actually would control the sorters and
09:28:07 3 control all the processing of the checks throughout the
09:28:12 4 check processing process.

09:28:13 5 Q. Were you personally involved in writing that software?

09:28:15 6 A. Yes. I was one of the authors of the software that
09:28:19 7 controlled that system.

09:28:19 8 Q. Is CPCS still being used in banks today?

09:28:23 9 A. Yes, it is.

09:28:23 10 Q. Where did you go to work next?

09:28:26 11 A. Next, I went to Norwest Bank.

09:28:31 12 Q. Is that shown here on our slide?

09:28:32 13 A. Yes, sir, it is.

09:28:33 14 Q. What did you do at Norwest Bank starting in 1991?

09:28:39 15 A. Norwest Bank was wanting to consolidate for multiple
09:28:44 16 check processing systems down to a single check processing
09:28:48 17 system on the CPCS, the check processing control system, so
09:28:52 18 I was one of the lead engineers actually putting them on to
09:28:57 19 a common system.

09:28:57 20 Q. Were you involved at Norwest in something called
09:29:00 21 transaction or item processing?

09:29:02 22 A. Yes, sir, I was.

09:29:03 23 Q. What is that?

09:29:04 24 A. So in addition to checks, the processes within the
09:29:11 25 bank, of course, have ATM machines, we had branches, we had

09:29:16 1 debit cards, we had ACH, so all of those things had to be
09:29:20 2 pulled together and actually posted to the customers'
09:29:23 3 accounts so the customers would get their deposits, they
09:29:25 4 would get their checks, they would get their ATM
09:29:29 5 transactions. So all those things had to come together,
09:29:31 6 and I built that system at Norwest.

09:29:34 7 THE COURT: Mr. Hecht, would you slow down just a
09:29:36 8 little bit?

09:29:36 9 THE WITNESS: Yes, sir. Sorry, Your Honor.

09:29:37 10 THE COURT: That's fine. That's fine, but please
09:29:37 11 try to slow down.

09:29:39 12 Go ahead, counsel.

09:29:40 13 MR. MELSHEIMER: Thank you, Your Honor.

09:29:41 14 Q. (By Mr. Melsheimer) What was the next project you
09:29:44 15 worked on at Norwest? Was it something call the Hogan
09:29:48 16 system?

09:29:48 17 A. Yes, sir, it was the Hogan system.

09:29:51 18 Q. What is the Hogan system, as pointed out on this slide,
09:29:54 19 sir?

09:29:54 20 A. Yes. The Hogan system is a deposit system. And so
09:29:57 21 your deposits and savings accounts were actually controlled
09:30:00 22 on the Hogan system. And so you had all those things that
09:30:05 23 I mentioned before, like your debit card or your ATM
09:30:08 24 transactions or your transactions at the branch or wire
09:30:12 25 transfer. All those things come together in the Hogan

09:30:14 1 system so that you can actually see it within your banking
09:30:19 2 system.

09:30:19 3 Q. Is the Hogan system still in use today, sir?

09:30:23 4 A. It is. It's the core system that's used for deposits
09:30:26 5 and savings even still today.

09:30:28 6 Q. Including at Wells Fargo?

09:30:29 7 A. Yes, sir.

09:30:30 8 Q. Now, did something happen in the mid-1990s that allowed
09:30:36 9 what's called interstate banking?

09:30:39 10 A. Yes, sir.

09:30:40 11 Q. What happened?

09:30:40 12 A. There was a new law that allowed for interstate
09:30:45 13 banking.

09:30:45 14 Q. What was the state, if you will, of interstate banking
09:30:50 15 before the passage of this law?

09:30:51 16 A. Well, it was kind of weird. Customers were not allowed
09:30:55 17 to cross state lines to make a deposit. So what you had to
09:31:02 18 do is, if you had an account for a bank like Wells Fargo,
09:31:05 19 like you had an account in Texas and you had another
09:31:08 20 account in Louisiana, you would literally -- if you had to
09:31:12 21 make a deposit for the account in Texas, you would have to
09:31:14 22 go to a Texas branch. And if you had to make your -- a
09:31:18 23 deposit for an account from Louisiana, you had to actually
09:31:23 24 go across the state line and make the deposit in Louisiana.

09:31:25 25 Q. How did banking change after the passage of the

09:31:28 1 interstate banking law?

09:31:29 2 A. You were allowed now to make a deposit anywhere in the
09:31:34 3 U.S., so you didn't have to cross the state line, so it was
09:31:37 4 a big convenience for customers so that now you could make
09:31:40 5 your deposit anywhere -- wherever your bank was no matter
09:31:44 6 where your account was originally opened.

09:31:45 7 Q. Now, how did the banks back in this time period that
09:31:49 8 you were at Norwest, how did the banks physically transport
09:31:54 9 the checks from one bank to another?

09:31:57 10 A. Yeah, so the associated checks, it was planes, trains,
09:32:01 11 and automobiles. So we literally had trucks and cars and
09:32:08 12 planes, both commercial and private planes that would move
09:32:12 13 the checks across the whole country.

09:32:14 14 Q. Did this network that you just described for the ladies
09:32:18 15 and gentleman of the jury, remain in place even after the
09:32:21 16 passage of the interstate banking act?

09:32:24 17 A. Yes. As I mentioned, you could make the deposits
09:32:28 18 across the state lines, but the checks that were in your
09:32:30 19 deposit still had to be presented to the bank wherever they
09:32:32 20 were actually domiciled or wherever the bank was located.

09:32:39 21 Q. Is that called check presentment?

09:32:42 22 A. That's exactly what it was called, sir.

09:32:44 23 Q. Now, at some point, sir, did the Norwest Bank merge
09:32:48 24 with Wells Fargo?

09:32:49 25 A. Yes, they did.

09:32:50 1 Q. Was that in the late 1990s?

09:32:53 2 A. Yes, it was. It was 1999.

09:32:55 3 Q. Did you have any involvements in the merger between
09:32:56 4 Wells Fargo and Norwest?

09:32:56 5 A. Yes. I was one of the lead architects with that merger
09:32:59 6 between Norwest and Wells Fargo.

09:33:02 7 Q. What does that mean, sir?

09:33:03 8 A. What we did in that process and what it means is that
09:33:08 9 when you put together two large companies, you have to
09:33:10 10 figure out what the go-forward systems are going to be. So
09:33:14 11 we had to choose what all the -- the major systems were
09:33:17 12 going to be, and I was part of that technical team that
09:33:20 13 actually was choosing -- choosing what the go-forward
09:33:23 14 systems were for the combined company.

09:33:25 15 Q. Now, at some point, did you leave this Norwest/Wells
09:33:30 16 Fargo entity and go to work somewhere else?

09:33:32 17 A. Yes, sir, I did.

09:33:32 18 Q. What did you do next?

09:33:34 19 A. I went to work for IBM again.

09:33:37 20 Q. In 1999?

09:33:38 21 A. Yes, in 1999.

09:33:39 22 Q. Just very briefly, what did you do for IBM?

09:33:42 23 A. IBM, I worked on e-commerce systems, and those
09:33:48 24 e-commerce systems are systems that allow customers to
09:33:51 25 actually do transactions online.

09:33:53 1 Q. Is that like what we would think of as a shopping
09:33:59 2 website like Amazon or something of that nature?

09:34:00 3 A. Exactly right. So it's one of the early types of
09:34:03 4 e-commerce sites where goods were actually displayed --
09:34:07 5 typically where we have to go to a -- to a store or brick
09:34:10 6 and mortar to actually buy the goods. We put them online,
09:34:15 7 just like Amazon does. You could choose the product that
09:34:17 8 you wanted, and you could have it delivered to your home.

09:34:20 9 Q. Where did you go to work after you started work for IBM
09:34:22 10 in 1999?

09:34:23 11 A. I went back to Wells Fargo Bank.

09:34:25 12 Q. And was that in 2001?

09:34:27 13 A. Yes, sir, it was.

09:34:28 14 Q. Have you been there ever since?

09:34:29 15 A. Yes, I have.

09:34:30 16 Q. What was your role -- tell the jury, sir, what your
09:34:35 17 role was at Wells Fargo when you rejoined the bank in 2001?

09:34:39 18 A. Yes. I was a lead architect for the operations space
09:34:46 19 that included, again, check processing, transaction
09:34:49 20 posting, and image processing for the bank.

09:34:51 21 Q. Sir, does that mean that you've been involved at Wells
09:34:55 22 Fargo with everything related to checks since 2001?

09:34:58 23 A. Yes, sir.

09:34:59 24 Q. Now, since you went back to work at Wells Fargo, have
09:35:04 25 you worked in Internet and mobile banking?

09:35:07 1 A. Yes, I have.

09:35:08 2 Q. Have you worked on Mobile Deposit?

09:35:11 3 A. Yes, I have.

09:35:12 4 Q. What roles have you had at Wells Fargo with respect to
09:35:16 5 Mobile Deposit?

09:35:16 6 A. Well, I -- because I was the lead architect relative to
09:35:21 7 the checking process, everything related to check,
09:35:24 8 including Mobile Deposit, I was engaged and would educate
09:35:29 9 and then also make decisions as to how we'd actually
09:35:32 10 process checks.

09:35:32 11 Q. When did Mobile Deposit begin at Wells Fargo?

09:35:36 12 A. 2012.

09:35:38 13 Q. Did the bank begin exploring it before it was
09:35:42 14 implemented?

09:35:43 15 A. Yes, we did.

09:35:44 16 Q. Do you know exactly when the bank started exploring
09:35:48 17 Mobile Deposit?

09:35:48 18 A. In the very early 2 -- 2000s.

09:35:50 19 Q. Do you still currently consult on issues related to
09:35:56 20 Mobile Deposit?

09:35:56 21 A. Yes, I do.

09:35:57 22 Q. What are some of the areas connected with Mobile
09:36:01 23 Deposit that you've been personally involved in?

09:36:03 24 A. So it was the standards as to, you know, how you would
09:36:09 25 actually process the images and -- and what the image

09:36:13 1 quality was, all the ways that we would have to process
09:36:18 2 them to make sure that they were correct for our customers,
09:36:22 3 and also heavily involved in the fraud components of it.
09:36:25 4 Q. When you say fraud components, we're going to get into
09:36:29 5 that in a little more detail, but at a high level, what do
09:36:33 6 you mean by you were involved in the fraud components? I
09:36:35 7 assume you mean fraud prevention components.
09:36:38 8 A. Yes. Good call-out. Yes. The fraud prevention is
09:36:43 9 what we would focus on to make sure that the fraudsters
09:36:46 10 were not taking advantage of our customers.
09:36:48 11 Q. Now, do you have any patents related to your work at
09:36:53 12 Wells Fargo in connection with check processing?
09:36:55 13 A. Yes, sir, I do.
09:36:56 14 Q. Are you a named inventor on 13 issued patents?
09:37:03 15 A. Yes, it's 13.
09:37:05 16 Q. Was it -- was it 12 up -- up until just a few days ago?
09:37:08 17 A. Yes, I just got another one within the past few days.
09:37:12 18 Q. And are you also named as an inventor on 61 different
09:37:17 19 patent applications that may still be pending?
09:37:20 20 A. Yes, 61 patents that are still pending.
09:37:22 21 Q. Does Wells Fargo have a patent hall of fame, as it
09:37:27 22 were?
09:37:28 23 A. Yes, they do.
09:37:29 24 Q. Are you in it?
09:37:30 25 A. Yes.

09:37:30 1 Q. Mr. Hecht, does Wells Fargo have a history of being an
09:37:39 2 innovator in the Internet and mobile banking sectors?

09:37:41 3 A. Absolutely we do.

09:37:42 4 Q. Do we have a slide to illustrate that?

09:37:45 5 A. Yes.

09:37:46 6 Q. So what are some of the innovations that Wells Fargo
09:37:51 7 has been the first to announce, if you could just summarize
09:37:55 8 the -- the three entries on this timeline.

09:37:58 9 A. Yes. We were the first in Internet banking. We were
09:38:01 10 the first in deposit -- remote deposit capture. And we
09:38:06 11 were the first in mobile banking.

09:38:08 12 Q. So the Internet banking was in 1995, the first remote
09:38:14 13 deposit capture was 2004, and the first mobile banking was
09:38:18 14 2007?

09:38:19 15 A. Yes, sir, that's correct.

09:38:20 16 Q. So I want to ask you a few questions about each of
09:38:23 17 those, sir. What are some of the services that Wells Fargo
09:38:27 18 offered through Internet banking? And we have a slide
09:38:32 19 displayed for the jury, don't we, sir?

09:38:33 20 A. Yes, we do. So as part of the first Internet bank in
09:38:37 21 1995, we had checking, savings, credit card account
09:38:40 22 balances that you could see online.

09:38:43 23 You could see your transaction history, as opposed
09:38:45 24 to just seeing it on your statement, which is the way it
09:38:48 25 was before that.

09:38:49 1 And then we paid -- added paying bills in 1996 and
09:38:54 2 had a hundred thousand customers a month by 1999, and that
09:38:58 3 was over a million customers total at that time.

09:39:02 4 Q. Is Internet banking a form of remote banking?

09:39:05 5 A. It certainly is.

09:39:06 6 Q. How is it?

09:39:06 7 A. It was the first time that you really could transact
09:39:10 8 from your home or really anywhere and see online all your
09:39:15 9 transactions and all the things that are listed here.

09:39:18 10 Q. Could the customer be anywhere in the world where they
09:39:21 11 had an Internet connection?

09:39:22 12 A. Yes, sir, they could.

09:39:23 13 Q. How would you describe Wells Fargo's introduction of
09:39:26 14 Internet banking back in 1995?

09:39:28 15 A. It was extremely innovated and, again, we were leading
09:39:33 16 the way, back at that time.

09:39:34 17 Q. Was this the beginning of personal banking over the
09:39:37 18 Internet?

09:39:37 19 A. Yes, sir, it was.

09:39:38 20 Q. Is remote banking the same or different from mobile
09:39:47 21 banking?

09:39:47 22 A. Well, mobile banking is a form of remote banking. So
09:39:55 23 mobile is, again, just one subset of the -- the capability.

09:39:59 24 Q. Is it -- is mobile banking another way of the customer
09:40:03 25 doing banking without having to go to a physical location?

09:40:06 1 A. Yes, sir, it is.

09:40:08 2 Q. Okay. Let's talk about remote deposit capture. When
09:40:11 3 did Wells Fargo first offer a remote deposit capture
09:40:15 4 product?

09:40:16 5 A. That was in 2004.

09:40:20 6 Q. What was that product called?

09:40:21 7 A. It was called Desktop Deposit.

09:40:23 8 Q. Who was the engineer at the bank who developed the
09:40:27 9 Desktop Deposit product?

09:40:28 10 A. It was Mr. Byron Chun.

09:40:34 11 Q. Now, as the corporate representative, you've been
09:40:36 12 permitted to be present for the entire trial, sir?

09:40:39 13 A. Yes, sir, I have.

09:40:41 14 Q. Do you recall it being said that -- by USAA that the
09:40:46 15 Desktop Deposit product was only offered to large business
09:40:50 16 customers or primarily offered to large business customers?

09:40:52 17 A. Yes, sir, I remember that.

09:40:53 18 Q. Is that accurate?

09:40:54 19 A. No, it's not accurate.

09:40:58 20 Q. Can you explain why it's inaccurate?

09:40:59 21 A. It's inaccurate because we offered it to both
09:41:03 22 commercial customers at the beginning and then quickly
09:41:06 23 thereafter, we made it available to small business
09:41:10 24 customers, and then also we had consumer customers that
09:41:13 25 used it also.

09:41:14 1 Q. Now, we have a slide for that, sir, in front of the
09:41:17 2 jury.

09:41:18 3 Generally speaking, did Desktop Deposit involve
09:41:22 4 fraud prevention and reduction tools?

09:41:24 5 A. Yes, it did.

09:41:25 6 Q. Did it include things like duplicate detection and
09:41:28 7 customer authentication, amount verification, and things of
09:41:32 8 that nature?

09:41:33 9 A. Yes, sir.

09:41:34 10 MS. GLASSER: Objection, Your Honor.

09:41:35 11 THE COURT: State your objection.

09:41:36 12 MS. GLASSER: The basis discussed in chambers,
09:41:39 13 Your Honor, claim elements.

09:41:41 14 MR. MELSHEIMER: May I respond, Your Honor?

09:41:42 15 THE COURT: You may.

09:41:43 16 MR. MELSHEIMER: I believe this slide was approved
09:41:45 17 by the Court to display to the jury, sir.

09:41:47 18 THE COURT: All right. I'll overrule the
09:41:49 19 objection. But let's move on at a high level.

09:41:51 20 Q. (By Mr. Melsheimer) Did Wells Fargo ever expand its
09:41:58 21 mobile banking offerings beyond business customers to
09:42:01 22 include individuals?

09:42:03 23 A. Yes, sir, we did.

09:42:06 24 Q. Did Wells Fargo introduce something called Wells Fargo
09:42:17 25 mobile in 2007?

09:42:18 1 A. Yes, sir, we did.

09:42:20 2 Q. What type of services were offered at the launch of
09:42:25 3 Wells Fargo mobile, as displayed on the slide in front of
09:42:29 4 the jury, sir?

09:42:29 5 A. Yes. So starting off, CEO, our Commercial Electronic
09:42:35 6 Office, that offered treasury services. That's basically
09:42:38 7 commercial services for large commercial customers.

09:42:44 8 But then subsequently, we provided mobile services
09:42:47 9 to our consumer banks, our consumer banking customers via
09:42:52 10 web browser, and then subsequently through an app. And
09:42:56 11 that, again, we could -- you could check your balance or
09:42:59 12 you could see your transactions or you could transfer money
09:43:02 13 between your accounts.

09:43:03 14 Q. When Wells Fargo first introduced mobile banking in
09:43:06 15 2007, did it offer what's been called an app for your
09:43:10 16 mobile or smartphone?

09:43:11 17 A. At the beginning, it was just on a web browser.

09:43:17 18 Q. Why was it not offered on an app at the very beginning?

09:43:20 19 A. Because the apps were just entering and really weren't
09:43:24 20 available yet, so we had to develop that subsequently.

09:43:27 21 Q. When did the first broadly accessible App Store open
09:43:32 22 up, to your knowledge, sir?

09:43:34 23 A. Yeah, it was 2007/2008 is when Apple launched the
09:43:38 24 iPhone and the Apple Store where you could actually
09:43:43 25 download apps and put them onto your device.

09:43:45 1 Q. So how could Wells Fargo offer mobile banking in 2007
09:43:52 2 on a smartphone without an app?

09:43:53 3 A. Yeah. So what we did, if you recall, on your desktop,
09:43:59 4 you had a very large screen. And the websites at that
09:44:02 5 time, it was very hard to understand or see what was on
09:44:05 6 that, and so we changed the display so that on your mobile
09:44:09 7 device, you could actually see what you would see on a
09:44:13 8 large website and do processing just on a web browser on
09:44:17 9 your mobile phone.

09:44:20 10 Q. Is using a web browser for mobile banking different
09:44:25 11 than using an app for mobile banking?

09:44:27 12 A. Yes, sir, it is.

09:44:28 13 Q. Can you give the jury an example of a mobile app
09:44:33 14 that -- that can also be used through your browser on your
09:44:36 15 computer?

09:44:37 16 A. Sure. A good example is Facebook. So Facebook, you
09:44:40 17 can get on your browser and get on Facebook, and you can
09:44:43 18 see it, but you can also download the Facebook app. You
09:44:46 19 can get on to Facebook and see the same thing in an app.

09:44:50 20 Q. When did Wells Fargo first introduce an app for mobile
09:44:55 21 banking?

09:44:56 22 A. I believe that was May 18th, 2009.

09:44:59 23 Q. So the mobile banking availability was 2007 on your
09:45:07 24 computer, but the app was not released until May of 2009?

09:45:12 25 A. That's what I remember, yes.

09:45:14 1 Q. Mr. Hecht, can you give the jury some sense of why
09:45:22 2 Wells Fargo was the first bank to announce a remote deposit
09:45:27 3 capture product, the first bank to announce Internet
09:45:30 4 banking, and the first bank to announce mobile banking?
09:45:33 5 A. Yes. We are heavily engaged in innovation, and it's
09:45:37 6 been really important to us to provide services to our
09:45:42 7 customers early in the process. And that's really why you
09:45:46 8 see all these things that we were first in.
09:45:48 9 Q. Does Wells Fargo have an innovation lab?
09:45:51 10 A. Yes, we have a very large innovation lab.
09:45:54 11 Q. What can you tell the jury about Wells Fargo's
09:45:57 12 innovation lab?
09:45:57 13 A. It's been around for a long time, and it, again, is a
09:46:03 14 place where we test new technologies, like some of the
09:46:07 15 things that are listed on the screen. And we continue to
09:46:10 16 do that. We did -- we've been doing that for many, many
09:46:13 17 years, since I've been at Wells Fargo. We continue to do
09:46:16 18 it today.
09:46:16 19 Q. How many computer engineers are employed by or
09:46:20 20 associated with the Wells Fargo innovation lab?
09:46:23 21 A. Hundreds -- hundreds of engineers and also business
09:46:27 22 people.
09:46:27 23 Q. Mr. Hecht, did you hear the opening statement, the
09:46:34 24 suggestion or implication made by counsel for USAA that
09:46:38 25 Wells Fargo was not innovative or was somehow on the

09:46:42 1 sidelines?

09:46:42 2 A. Yes, I heard that.

09:46:43 3 Q. Do you -- is that correct?

09:46:45 4 A. It's absolutely not correct.

09:46:46 5 Q. Do you recall it being suggested that Wells Fargo had
09:46:51 6 no internal capability to build or sustain a remote deposit
09:46:57 7 capture system?

09:46:58 8 A. Yes, I heard that.

09:46:59 9 Q. Do you agree with that?

09:47:01 10 A. I absolutely do not --

09:47:02 11 Q. Why not?

09:47:02 12 A. -- agree with that? Because we had a whole innovation
09:47:06 13 team that was the first to actually put a Desktop Deposit
09:47:11 14 product on the market.

09:47:12 15 Q. Did you hear the opening statement where counsel for
09:47:19 16 USAA suggested that USAA was innovative because its
09:47:23 17 customers were military members who had unique or different
09:47:27 18 needs from Wells Fargo's customers?

09:47:28 19 A. Yes, sir, I heard that.

09:47:30 20 Q. Did that seem right to you?

09:47:31 21 A. No, sir, it's not correct.

09:47:33 22 Q. Why not?

09:47:34 23 A. We have many military customers around the whole world.

09:47:38 24 Q. And does Wells Fargo have customers throughout the
09:47:40 25 United States?

09:47:41 1 A. Yes, sir.

09:47:41 2 Q. And all over the world?

09:47:43 3 A. All over the world, yes.

09:47:44 4 Q. Mr. Hecht, if Internet banking came about in 1995, why
09:47:56 5 wasn't the first remote deposit product released until
09:48:01 6 2004?

09:48:02 7 A. Because it wasn't legal.

09:48:04 8 Q. Did the law change that made remote deposit capture
09:48:11 9 legal or permissible at some point?

09:48:13 10 A. Yes, sir, it did.

09:48:14 11 Q. When did that law change?

09:48:16 12 A. It changed in 2004.

09:48:17 13 Q. What was that law called?

09:48:20 14 A. Check 21.

09:48:21 15 Q. Can you tell the jury what Check 21 -- your
09:48:25 16 understanding of it was?

09:48:27 17 A. Yeah. So as I mentioned earlier, you had to actually
09:48:33 18 present the physical check to the bank, wherever the bank
09:48:38 19 was located, before Check 21.

09:48:41 20 After Check 21, it allowed for what was called a
09:48:46 21 substitute check, which means that instead of actually
09:48:50 22 presenting the physical check to the actual bank in the
09:48:53 23 state where that bank was located, or the presentment point
09:48:56 24 is what it was called, you could now deliver a substitute
09:49:03 25 check instead. And so that was the key to that law.

09:49:06 1 Q. Was there a tragic event in our country's history
09:49:09 2 that -- that caused a change in the law, sir?

09:49:11 3 A. Yes, there was. It was 9/11.

09:49:13 4 Q. How did the 9/11 terrorist attacks against our country
09:49:21 5 cause a change in the financial industry and check
09:49:23 6 processing?

09:49:23 7 A. Yes. So when 9/11 happened, as I mentioned before, the
09:49:27 8 planes, both commercial planes and private planes, they
09:49:31 9 were grounded for a number of days. And the financial
09:49:34 10 system really was -- was locked up during that period
09:49:37 11 because of that problem.

09:49:38 12 Q. Why would the planes being grounded have affected so
09:49:44 13 much of the financial industry, Mr. Hecht?

09:49:46 14 A. Yes. The checks, again, were sitting in the area where
09:49:56 15 they were captured. And, again, before Check 21, they had
09:49:56 16 to be presented, so they just didn't move. So the checks
09:49:58 17 were stuck in airports, in bank operations areas, and they
09:50:03 18 were just sitting there waiting for the planes to fly
09:50:06 19 again.

09:50:06 20 Q. Tell the jury how exactly the change in the law brought
09:50:12 21 about by Check 21 paved the way for remote check deposit?

09:50:19 22 A. Sure. So now since you could present a substitute
09:50:22 23 check or a copy -- it was called an IRD, or an image
09:50:23 24 replacement document -- what you could do is take an image
09:50:26 25 of a check and you could print it somewhere else

09:50:30 1 electronically. That was the starting point.

09:50:35 2 And then subsequently, it actually enabled what
09:50:38 3 was called image exchange.

09:50:39 4 Q. Did the banks -- after the passage or in connection
09:50:43 5 with the passage of Check 21, did the banks create
09:50:47 6 something called image exchange networks?

09:50:51 7 A. Yes, that's what I just mentioned. And, yes, those
09:50:54 8 image exchange networks were a fast follower to that
09:50:57 9 process of the substitute check.

09:50:58 10 Q. What -- what were the image exchange networks? Tell
09:51:03 11 the jury.

09:51:03 12 A. Sure. So they were a number of different networks that
09:51:06 13 were put together to actually allow all the banks in the
09:51:09 14 United States to actually set protocols and standards to
09:51:14 15 deliver, now, image files between the banks so that now we
09:51:18 16 would eliminate the problem that we had that was part of
09:51:21 17 the terrorist attack. So if the planes got grounded, we
09:51:27 18 could now over a network. We could deliver the images from
09:51:31 19 the place that they were presented, say in a branch or ATM
09:51:34 20 machine, we could image them, and then we could deliver
09:51:36 21 those images to wherever we needed to deliver them,
09:51:39 22 anywhere in the country via networks and files of those
09:51:42 23 images and the associated data to the bank that is the
09:51:46 24 receiving bank.

09:51:47 25 Q. Mr. Hecht, were you involved -- personally involved in

09:51:51 1 the setting of standards or rules for the transmission of
09:51:57 2 check images and related documents?

09:51:58 3 A. Yes. I was the lead person on the technology side of
09:52:02 4 defining the specifications for Wells Fargo Bank in all the
09:52:08 5 conversations with all the other major banks in the -- in
09:52:11 6 the country.

09:52:11 7 Q. Why did the banks need to have standards or rules for
09:52:17 8 this transmission and processing of images of checks?

09:52:23 9 A. Yes. As we've heard during this trial, the -- there's
09:52:28 10 a lot of different ways that images can be captured in
09:52:30 11 different quality of cameras and that type of thing. It
09:52:35 12 was crucial that we actually had standards so that
09:52:37 13 customers could actually use the images.

09:52:39 14 So if it was a low-quality image or if it was a
09:52:42 15 problem with it that, you know, you didn't capture the
09:52:44 16 whole image or it could even be a technical problem, like
09:52:48 17 the format of the image was not something that the
09:52:51 18 receiving bank could use, so we had to set those standards
09:52:55 19 so that all the banks in the United States could actually
09:52:58 20 use the data to facilitate what they had put in place for
09:53:02 21 decades with the physical movement of checks. And
09:53:06 22 everybody counting on the physical check, now we needed
09:53:10 23 to -- to allow the customers to do that same type of thing
09:53:13 24 and utilize the images.

09:53:16 25 Q. You were personally involved in the committee set up to

09:53:20 1 agree upon and formulate these standards and rules?

09:53:23 2 A. Yes, sir.

09:53:24 3 Q. Are you familiar with an organization called the
09:53:31 4 American National Standards Institute?

09:53:34 5 A. Yes, sir, I am.

09:53:35 6 Q. Is that sometimes called ANSI?

09:53:37 7 A. Yes, sir.

09:53:37 8 Q. Was ANSI involved in image standards setting --

09:53:43 9 A. Yes --

09:53:43 10 Q. -- back in this time period?

09:53:46 11 A. -- yes, sir. Yes, we had a -- a subgroup underneath
09:53:49 12 that was called X9 that set these standards so that
09:53:52 13 everybody would have all the correct standards to use in
09:53:54 14 these image exchanges so that we could set that commonality
09:53:59 15 across all the banks in the United States.

09:54:00 16 Q. Were you on that -- one of those committees?

09:54:04 17 A. I was on many of those committees, yes.

09:54:05 18 Q. Was Mr. Bill Saffici, who's in the courtroom, was he
09:54:11 19 also on those committees, sir?

09:54:13 20 A. Yes. Yes, sir, he was.

09:54:14 21 Q. Those are the committees setting the standards for
09:54:18 22 check imaging?

09:54:19 23 A. Yes, sir.

09:54:19 24 Q. Were there other banking institutions involved in those
09:54:24 25 image standard committees, sir?

09:54:25 1 A. Yes, there were.

09:54:26 2 Q. Who were some of the banks?

09:54:28 3 A. So it was Wachovia, Bank One, Bank of America, Chase,
09:54:35 4 U.S. Bank. Those were some of the key banks that were
09:54:38 5 included in those groups that were setting the standards.

09:54:41 6 Q. Was USAA, to your knowledge -- your personal knowledge,
09:54:45 7 involved in any of the committees that you were involved
09:54:48 8 in?

09:54:49 9 A. No, sir, they were not.

09:54:50 10 Q. Did you see them in any other committees that you
09:54:52 11 weren't involved in?

09:54:53 12 A. No, sir, I did not.

09:54:54 13 Q. Can you tell the jury how Check 21 and the associated
09:55:05 14 image exchange networks and all the standards setting that
09:55:08 15 you and others were personally involved in, how did that
09:55:13 16 lay the groundwork for what we know today is remote check
09:55:18 17 deposit?

09:55:18 18 A. Yes. Again -- so now that we have all those standards
09:55:21 19 and we had all -- we had the capability to electronically
09:55:25 20 deliver, it opened up another frontier where we now could
09:55:29 21 use Desktop Deposit to actually allow customers to
09:55:35 22 basically take -- they didn't only not have to go to an ATM
09:55:39 23 or branch anymore, they could do it from anywhere.
09:55:42 24 Anywhere that they had a connection and a way to scan the
09:55:45 25 item, they -- it basically opened that up for our

09:55:47 1 customers.

09:55:48 2 Q. Is remote deposit capture one way of using the image
09:55:55 3 capability made possible by Check 21 and the standards
09:55:59 4 setting?

09:55:59 5 A. Yes, that's one way.

09:56:01 6 Q. Are there other ways?

09:56:02 7 A. Yes, there's many other ways.

09:56:03 8 Q. When did Check 21 take effect, sir?

09:56:06 9 A. It was October 28th, 2004.

09:56:11 10 Q. What day did Wells Fargo release its remote check
09:56:17 11 deposit product?

09:56:18 12 A. October 28th, 2004.

09:56:20 13 Q. Is that the same day?

09:56:21 14 A. That's the same day.

09:56:26 15 Q. Is that something that had been in the works with the
09:56:29 16 anticipation of the passage of the law?

09:56:31 17 A. Yes. It was a really important thing from an
09:56:34 18 innovation perspective that we hit the ground on the day
09:56:38 19 that it was legal to do Desktop Deposit. We needed to hit
09:56:42 20 that day. That was an internal imperative.

09:56:46 21 MR. MELSHEIMER: Can we move to the next slide,
09:56:49 22 Mr. Bakale?

09:56:52 23 Q. (By Mr. Melsheimer) Mr. Hecht, are you familiar with
09:56:54 24 the check deposit systems used at Wells Fargo?

09:56:56 25 A. Yes, sir, I am.

09:56:56 1 Q. Have you been familiar with those personally for over
09:56:59 2 20 years?

09:57:00 3 A. Yes, sir.

09:57:01 4 Q. Okay. Are those sometimes referred to as the back end
09:57:04 5 processes?

09:57:04 6 A. Yes, that's correct.

09:57:08 7 MR. MELSHEIMER: We might move to the next slide,
09:57:10 8 Mr. Bakale.

09:57:11 9 Q. (By Mr. Melsheimer) What is this slide illustrating
09:57:18 10 for the jury, Mr. Hecht?

09:57:19 11 A. Yes. As part of this kind of revolution with the way
09:57:22 12 that we can process checks, we ended up with hundreds of
09:57:26 13 sources that come into our environment that are
09:57:30 14 electronified checks.

09:57:33 15 Q. How many different ways can a check make its way to
09:57:38 16 Wells Fargo?

09:57:38 17 A. It's literally hundreds of ways that the check can come
09:57:42 18 in electronically.

09:57:43 19 Q. Can you at a high level, sir, describe some of the
09:57:47 20 examples shown on this slide of the ways that checks can
09:57:52 21 make their way into the bank processing system?

09:57:56 22 A. Sure. So if you look across the bottom, those --
09:57:59 23 that's a subset of some of the key ways. So we can image
09:58:03 24 checks at a teller or a branch. We image them at an ATM
09:58:08 25 machine. Desktop Deposit, that I just mentioned earlier.

09:58:14 1 Mobile deposit, which we're talking about in this forum
09:58:16 2 here. Electronic deposit, that's for our commercial
09:58:19 3 customers to be able to send us files of checks that they
09:58:24 4 may have captured in their environments.

09:58:26 5 Lockbox is like where you send in your electric
09:58:30 6 bill or your phone bill in the mail. It gets processed
09:58:34 7 through what's called a lockbox, and we capture images in
09:58:37 8 that process.

09:58:37 9 Image exchange is what I talked about earlier
09:58:40 10 where the banks do image exchange between all the banks in
09:58:43 11 the country. And then correspondent banks is where other
09:58:47 12 banks, we provide services to other banks to process their
09:58:50 13 checks on their behalf.

09:58:52 14 Q. Do all these sources, sir, involve check imaging,
09:58:59 15 potentially?

09:59:00 16 A. Yes, sir, they do.

09:59:01 17 Q. And what, then, is the primary difference between these
09:59:06 18 sources?

09:59:06 19 A. The primary difference is the front end process. If
09:59:14 20 you think about that, your experience at an ATM machine or
09:59:18 21 a branch is much different, but the -- the process as you
09:59:21 22 move into the operations of the bank is exactly the same.

09:59:23 23 Q. I want to make sure I'm clear about this. You say
09:59:28 24 teller. When someone goes to the bank with a teller and a
09:59:31 25 paper check, that seems like it's a piece of paper. Are

09:59:35 1 you saying there's imaging involved, as well?

09:59:37 2 A. Yes, sir, there is.

09:59:37 3 Q. How is that?

09:59:40 4 A. So if you walk into a branch within Wells Fargo, we
09:59:43 5 scan the deposited check at the teller, capture that image,
09:59:48 6 and then we deliver that image into the bank for
09:59:50 7 processing.

09:59:51 8 Q. So after the check gets into the bank systems from one
10:00:01 9 of these sources, is the process of what the bank does
10:00:06 10 after that the same for all the sources or different?

10:00:09 11 A. It's the same.

10:00:11 12 Q. What do you mean by that?

10:00:13 13 A. So the key thing is there's -- as I mentioned before,
10:00:18 14 just as we set standards throughout the industry, we've got
10:00:21 15 to normalize things so that customers -- we can't show them
10:00:25 16 a different type of image that was captured in the branch
10:00:27 17 or captured in the ATM machine.

10:00:30 18 The customers just know that their check made it
10:00:33 19 to them through some way, and they don't care whether their
10:00:36 20 friend that they wrote the check to deposited it at a
10:00:39 21 branch or whether they deposit it through Desktop Deposit
10:00:45 22 or Mobile Deposit. It gets to them either way in a common
10:00:51 23 way.

10:00:51 24 Q. Do you have a way that you describe the deposit
10:00:54 25 infrastructure and the processing of checks regardless of

10:00:58 1 where they come from within the bank?

10:01:01 2 A. Yes, sir.

10:01:02 3 Q. What do you call that?

10:01:03 4 A. It's called funnels into funnels is what we call it.

10:01:08 5 So like front end processes that I just described, but then

10:01:12 6 we have to kind of aggregate those and then ultimately get

10:01:15 7 it into the common processes that are part of our

10:01:17 8 operations for check processing that have been there for a

10:01:20 9 long time.

10:01:20 10 Q. Have you -- has the bank ever created any diagrams or

10:01:28 11 records demonstrating this funnels into funnels concept,

10:01:32 12 sir?

10:01:32 13 A. Yes, sir, we have.

10:01:33 14 Q. Can you look in your binder, sir --

10:01:35 15 MR. MELSHEIMER: And Mr. Bakale, please don't show

10:01:38 16 this just yet.

10:01:42 17 Q. (By Mr. Melsheimer) -- at Defendant's Exhibit DTX-230?

10:01:45 18 A. Yes, sir, I have that.

10:01:46 19 Q. Was this a document made at or near the time of the

10:01:49 20 events or conditions recorded?

10:01:51 21 A. Yes.

10:01:52 22 Q. Was this a document made in the regular course of Wells

10:01:56 23 Fargo's business?

10:01:56 24 A. Yes.

10:01:56 25 Q. Was this document kept in the regular course of Wells

10:01:59 1 Fargo's business?

10:01:59 2 A. Yes.

10:02:00 3 Q. Was the information in the document made by or from
10:02:05 4 information transmitted by a person with knowledge of the
10:02:08 5 events or the conditions recorded?

10:02:10 6 A. Yes, it was.

10:02:11 7 MR. MELSHEIMER: Your Honor, I offer DTX-230. It
10:02:15 8 was not pre-admitted, but there was a request that we lay a
10:02:19 9 business records foundation. I offer it with that
10:02:21 10 foundation, Your Honor.

10:02:23 11 MS. GLASSER: No objection, Your Honor.

10:02:24 12 THE COURT: Well, it was pre-admitted conditioned
10:02:26 13 upon laying the business records prerequisite, which the
10:02:32 14 Court finds you have done, so I'll consider it appropriate
10:02:34 15 for publication to the jury.

10:02:36 16 MR. MELSHEIMER: Thank you, Your Honor.

10:02:38 17 Mr. Bakale, you may now publish to the jury
10:02:42 18 DTX-230.

10:02:42 19 Q. (By Mr. Melsheimer) Mr. Hecht, when was this slide
10:02:49 20 deck created?

10:02:50 21 A. It was created in 2010.

10:02:55 22 Q. So -- and just so we're clear, this is a page out of a
10:03:01 23 larger slide deck?

10:03:03 24 A. Yes, that's correct.

10:03:04 25 Q. These PowerPoint decks that you typically use in -- in

10:03:08 1 business?

10:03:08 2 A. Yes, correct.

10:03:09 3 Q. It was prepared in 2010?

10:03:13 4 A. Yes, sir.

10:03:14 5 Q. And you said that there were diagrams of this funnel
10:03:19 6 into funnel's concept. Is this an example of the funnels
10:03:23 7 into funnels concept?

10:03:26 8 A. Yes, sir, it is.

10:03:27 9 Q. Now, just at a high level, sir, can you describe what's
10:03:31 10 shown on the left-hand side of this particular exhibit?

10:03:34 11 A. Sure, I can. So on the upper left, it says EFATM;
10:03:44 12 that's envelope free ATM. And, if you recall, many years
10:03:45 13 ago you used to have to put envelopes when you made a
10:03:47 14 deposit into an ATM machine. So this is where we actually
10:03:50 15 can capture the image of the check when you put it into the
10:03:55 16 ATM machine.

10:03:55 17 MRDC is mobile remote deposit capture. That's the
10:03:59 18 Mobile Deposit that we've been discussing.

10:04:00 19 BOB DTD, is business online banking. That was our
10:04:08 20 small business and our consumer channel to allow for
10:04:11 21 scanners to actually process deposits.

10:04:13 22 And then CEO DTD, that's Commercial Electronic
10:04:19 23 Office DTD. That's for our large commercial customers to
10:04:24 24 be able to process deposits.

10:04:27 25 Q. Are there other front end sources of checks that are

10:04:31 1 not listed on this particular document, sir?

10:04:33 2 A. Yes, sir, as -- as we saw on the prior slide, there's
10:04:35 3 hundreds of these types of sources.

10:04:37 4 Q. Why aren't these other sources listed on this slide,
10:04:41 5 sir?

10:04:41 6 A. This document was created to compare in the Internet
10:04:45 7 services group the other remote deposit capture sources
10:04:50 8 that were prevalent at the time. So these were put on to
10:04:54 9 the slide to describe how the -- these things were the same
10:04:58 10 and the different across those different input sources.

10:05:01 11 Q. So it looks like, sir, there's a bunch of arrows at the
10:05:05 12 very end on the -- sort of the middle of the slide towards
10:05:09 13 the right-hand side, there's arrows moving from those boxes
10:05:13 14 that then move -- all seem to be flowing to four different
10:05:18 15 boxes on the right starting with PIES/Risk Review,
10:05:26 16 Image-Mark, CK/CCD Dupes, and Hogan Posts. Do I have that
10:05:35 17 right?

10:05:36 18 A. Yes, you do.

10:05:36 19 Q. Is that reflecting that all of these check sources,
10:05:39 20 regardless of where they started from, end up in that back
10:05:42 21 end processing?

10:05:43 22 A. Yes, that's correct.

10:05:44 23 Q. At a high level, sir, can you just describe what those
10:05:47 24 boxes represent?

10:05:47 25 A. On the right-hand side?

10:05:48 1 Q. Starting with PIES/Risk Review. At a very general
10:05:54 2 level?

10:05:54 3 A. Sure. So PIES/Risk Review is -- is the input and
10:05:59 4 exception process where we actually can identify, as checks
10:06:04 5 come into the system in the common back end process, any
10:06:07 6 exceptions that we need to take action, like a fraudulent
10:06:10 7 transaction.

10:06:14 8 Image-Mark, the next one, there as you move right,
10:06:19 9 is a place where we do code line completion and things like
10:06:22 10 that where we correct the checks. So if there's a problem
10:06:25 11 with the account number or there's a problem with the
10:06:29 12 amount or the transaction, say, is out of balance, say the
10:06:32 13 customer made the deposit for \$100.00 but there was
10:06:35 14 actually \$150.00, we would give them a \$50.00 credit in
10:06:40 15 that process.

10:06:40 16 CK -- and then we also would do image quality
10:06:46 17 analysis in that -- in that box.

10:06:47 18 Q. Let me stop and ask you a question, sir.

10:06:49 19 A. Sure.

10:06:50 20 Q. What does the CK/CCD box represent?

10:06:54 21 A. Yes, that's cross channel duplicates. And that is
10:06:59 22 where we actually identify duplicates from across many
10:07:07 23 channels.

10:07:07 24 Q. And is -- is that a form of fraud prevention?

10:07:09 25 A. Yes, sir, it is.

10:07:10 1 Q. Is checking on duplicates something that you have to do
10:07:12 2 in this back end process to help prevent fraudulent
10:07:17 3 transactions?

10:07:17 4 A. Yes, it is.

10:07:19 5 Q. And then, finally, what is Hogan, parentheses, Posts?

10:07:23 6 A. That is where, again, we post the checks and the
10:07:27 7 deposits to the customer's account. So at that point, the
10:07:33 8 customer gets them posted so that you can see them on --
10:07:37 9 online or on your statement.

10:07:38 10 Q. So, sir, we've mentioned the term front end and back
10:07:45 11 end. I just want to make sure you and the jury are on the
10:07:48 12 same page. What is the front end of processing with
10:07:51 13 respect to the bank?

10:07:52 14 A. Yeah, the front end is everything to the left of PIES,
10:08:00 15 and then the back end is everything from PIES to the right.

10:08:03 16 Q. Is the back end the operational pieces required to
10:08:10 17 successfully post and process a check?

10:08:10 18 A. Yes, that is -- that's correct.

10:08:10 19 Q. Now, I noticed that this slide back in 2010 has the
10:08:15 20 title, MRDC will leverage downstream -- sorry, I read that
10:08:21 21 inaccurately.

10:08:22 22 MRDC will leverage existing downstream
10:08:31 23 infrastructure. Did I read that right?

10:08:31 24 A. Yes, you did.

10:08:31 25 Q. What does that mean?

10:08:31 1 A. On this slide, it actually means two things. The
10:08:35 2 consolidator piece, if you look into the yellow shaded, was
10:08:39 3 existing, and there are multiple sources. When I said
10:08:42 4 funnels -- into funnels earlier, there are multiple sources
10:08:47 5 that go into that consolidator. And that was existing.

10:08:50 6 And then also the PIES Image-Mark, CCD, and Hogan
10:08:56 7 Posts all was existing. And so all -- none of those things
10:09:00 8 needed to be built from the consolidator to the right to
10:09:02 9 implement MRDC. They were all there.

10:09:05 10 THE COURT: Counsel, approach the bench, please.

10:09:07 11 (Bench conference.)

10:09:18 12 THE COURT: How much longer do you expect your
10:09:18 13 direct to be?

10:09:18 14 MR. MELSHEIMER: Your Honor, I believe it's going
10:09:18 15 to be about another 30 to 35 minutes or so.

10:09:23 16 THE COURT: I'm going let the jury have a recess
10:09:30 17 at this juncture.

10:09:30 18 MR. MELSHEIMER: Do you think I'm going too
10:09:32 19 slowly, or do you want me to speak --

10:09:33 20 THE COURT: I'm not commenting one way or the
10:09:33 21 other.

10:09:37 22 MR. MELSHEIMER: Okay. Thank you.

10:09:37 23 (Bench conference concluded.)

10:09:37 24 THE COURT: Ladies and gentlemen, we're going to
10:09:37 25 take this opportunity to take a short recess. Close your

10:09:38 1 notebooks. You may simply leave them in your chairs.
10:09:38 2 Follow all the instructions that I've given you, including
10:09:41 3 not to discuss the case among yourselves. And we'll be
10:09:43 4 back in here shortly to continue with this witness.
10:09:47 5 The jury is excused for recess at this time.
10:09:49 6 COURT SECURITY OFFICER: All rise.
10:09:52 7 (Jury out.)
10:09:52 8 THE COURT: Court stands in recess.
10:30:33 9 (Recess.)
10:30:34 10 (Jury out.)
10:30:35 11 COURT SECURITY OFFICER: All rise.
10:30:36 12 THE COURT: Be seated, please.
10:30:36 13 Mr. Hecht, if you'll return to the witness stand,
10:30:44 14 please.
10:30:44 15 Let's bring in the jury.
10:31:01 16 COURT SECURITY OFFICER: All rise.
10:31:02 17 (Jury in.)
10:31:03 18 THE COURT: Please be seated.
10:31:18 19 All right. Counsel, you may continue with your
10:31:22 20 direct examination.
10:31:22 21 MR. MELSHEIMER: May it please the Court.
10:31:23 22 Q. (By Mr. Melsheimer) Mr. Hecht, returning to -- if we
10:31:28 23 could return to DTX-230, which is where we left.
10:31:33 24 Were any changes made to the infrastructure that
10:31:38 25 you describe here on the right-hand side of the slide with

10:31:43 1 the addition of mobile deposit as one of the sources of
10:31:48 2 check deposit?

10:31:49 3 A. No, there were no changes to the infrastructure.

10:31:50 4 Q. Is this infrastructure the general back end check
10:32:00 5 processing infrastructure that has been used at the bank
10:32:03 6 for decades?

10:32:04 7 A. Yes, sir, it is.

10:32:09 8 Q. Did you design certain of the systems within that back
10:32:09 9 end infrastructure?

10:32:10 10 A. Yes, sir, I did.

10:32:12 11 Q. What systems did you design, generally?

10:32:16 12 A. Actually, all the ones on the right, so PIES, Image
10:32:25 13 Mark, CCD, and Hogan. And then three of the consolidators,
10:32:30 14 the Retail CON, the Consolidator Ops, and the OPSCON in the
10:32:36 15 middle.

10:32:36 16 Q. And remind us what the -- what that CON stands for on
10:32:44 17 Retail CON and OPSCON.

10:32:45 18 A. Yeah, it's consolidator. As I talked about earlier,
10:32:50 19 the consolidator is a funnel into funnel, so if you take,
10:32:50 20 say, an ATM transaction, you can't send them to the back
10:32:53 21 end one deposit and one check at a time. We would
10:32:56 22 aggregate them primarily by time but also by volume and
10:33:02 23 bunch them up into batches and send them in to the back end
10:33:04 24 flow, similar to the way we process checks on that big 3890
10:33:07 25 sorter.

10:33:07 1 Q. Is something called OCR performed within this back end
10:33:13 2 infrastructure?

10:33:13 3 A. Yes, sir, it is.

10:33:15 4 Q. Remind us what OCR is.

10:33:16 5 A. It's optical character recognition.

10:33:18 6 Q. What is the role of opt -- opt -- I'm trying to say
10:33:28 7 octopus character recognition -- what's the role of optical
10:33:31 8 character recognition in this process, sir?

10:33:32 9 A. Yes. It's very important to identify the information
10:33:35 10 on the check, like the information that's in the box, the
10:33:38 11 numbers that we write in, and then also the letters -- when
10:33:42 12 you write in what's called the legal amount, when you write
10:33:45 13 the amount of the check on line where you say what the
10:33:48 14 amount is.

10:33:49 15 Q. I thought it was all done with check imaging now. Why
10:33:52 16 would you need OCR?

10:33:53 17 A. OCR takes that image data and actually takes both
10:33:57 18 the -- the numbers, handwriting or printed, and the letters
10:34:04 19 and converts them into numbers that we can use to validate
10:34:07 20 the amount.

10:34:07 21 Q. And this OCR process occurs in this back end
10:34:13 22 architecture or infrastructure that you described?

10:34:15 23 A. Yes, sir, it does.

10:34:16 24 Q. Is it a new technology or an old technology?

10:34:18 25 A. It's extremely old technology.

10:34:20 1 Q. How long has it been around?

10:34:21 2 A. Decades.

10:34:22 3 Q. Why is it important to do OCR on this back end

10:34:28 4 infrastructure within the bank as opposed to on the

10:34:31 5 customer's device?

10:34:32 6 A. Yes. It's really important, and it goes along with

10:34:35 7 what I talked about earlier, because we need consistency.

10:34:38 8 So we invested the highest amount in this back end process.

10:34:45 9 So we've got multiple character recognition

10:34:48 10 capabilities that kind of provide diversity so we get

10:34:52 11 different answers, and we can compare those to make sure

10:34:55 12 that the amounts are correct.

10:34:56 13 And that's not new. That is something that we

10:34:58 14 needed to do all the way back to the beginning of image

10:35:01 15 capture in those old 3890s.

10:35:02 16 Q. Would you ever rely on deposit data in this -- in the

10:35:06 17 bank's processing infrastructure that's supplied by an

10:35:12 18 unknown capture device?

10:35:13 19 A. I'm sorry, can you say that again?

10:35:15 20 Q. Would you ever rely on deposit data that's being

10:35:18 21 supplied by an unknown capture device without getting

10:35:21 22 some --

10:35:21 23 A. Yes. No -- yes, that makes sense. We -- we have to

10:35:24 24 recheck it. It's really important because we've got

10:35:27 25 hundreds of sources, as I've talked about earlier. Any one

10:35:32 1 of them, if they make a mistake on that front end process,
10:35:35 2 we've got to do it again on the back end to make sure that
10:35:38 3 it's right.

10:35:39 4 THE COURT: Mr. Hecht, please make sure the
10:35:41 5 question is finished before you start your answer.

10:35:43 6 THE WITNESS: Yes, sir. Sorry, Your Honor.

10:35:44 7 THE COURT: Go ahead, counsel.

10:35:44 8 Q. (By Mr. Melsheimer) Is duplicate detection performed
10:35:47 9 in this existing back end infrastructure?

10:35:50 10 A. Yes, it is.

10:35:52 11 Q. Has it always been so performed?

10:35:54 12 MS. GLASSER: Your Honor, I'd like to approach.

10:36:03 13 THE COURT: Approach the bench.

10:36:03 14 (Bench conference.)

10:36:04 15 MS. GLASSER: So with respect to the OCR, counsel,
10:36:09 16 I think, stepped over the line and asked about the claim
10:36:13 17 element -- part of the claim element and asked if this is
10:36:15 18 old technology. He got that answer. And now I think he's
10:36:18 19 proceeding to be -- about to do that, marching through
10:36:23 20 duplicate detection, marching through some of the other
10:36:25 21 words that are in the claims.

10:36:26 22 And, you know, I didn't want to make a fuss in
10:36:28 23 front of the jury if it's just the one time, but if he's
10:36:32 24 now going to do it multiple times with other claim
10:36:34 25 elements --

10:36:35 1 THE COURT: Mr. Melsheimer?

10:36:35 2 MR. MELSHEIMER: Two things, Your Honor. First of
10:36:37 3 all, you may recall Mr. Brady was allowed to talk about
10:36:41 4 what happened and where things happened, and so I'm simply
10:36:48 5 asking him a factual question. I didn't show him the claim
10:36:48 6 or use the exact claim language. I just talked about where
10:36:52 7 something occurred.

10:36:52 8 Now, we can argue from that, of course, but he's
10:36:54 9 not purporting to interpret the claim or offer
10:36:57 10 non-infringement testimony.

10:36:58 11 And then, secondly, this duplicate detection
10:37:02 12 question -- again, I don't think I'm going into -- I think
10:37:05 13 I'm -- I'm trying very hard, Your Honor, to follow your
10:37:08 14 instructions on not getting into great detail, but I think
10:37:12 15 it's important for him to say, look, we've done duplicate
10:37:16 16 detection for years --

10:37:17 17 THE COURT: Slow down a little bit.

10:37:18 18 MR. MELSHEIMER: Sorry, Your Honor.

10:37:19 19 We've done duplicate detection for years.

10:37:21 20 We've -- we've -- this is where we do it.

10:37:23 21 If you may recall, Your Honor, in the previous
10:37:25 22 depositions that were played, there were witnesses talking
10:37:29 23 all about this duplicate detection process, and they
10:37:31 24 weren't at all cabined by what the Court had said I was
10:37:36 25 limited to.

10:37:37 1 So I think it's fair game for this fact witness to
10:37:39 2 talk about what he knows of his own personal knowledge, and
10:37:42 3 I think there is minimal, and no risk really, of any
10:37:46 4 confusion about claim terms or getting into anything other
10:37:50 5 than apportionment and what was existing and what was not
10:37:54 6 existing.

10:37:54 7 Now, with respect to OCR, I think that was a fair
10:37:57 8 question to ask. Because, again, Mr. Brady was allowed to
10:38:01 9 do the same thing. So I -- I believe this is appropriate
10:38:04 10 and hasn't run afoul of any of the Court's guidance.

10:38:08 11 MS. GLASSER: And to be clear, the one thing that
10:38:10 12 I think is absolutely so far over the line was asking, was
10:38:13 13 this old?

10:38:14 14 THE COURT: Yeah, I noticed the -- the misreading
10:38:20 15 of the phrase and then going back to emphasize existing. I
10:38:26 16 would have to wonder if that was an accident the way that
10:38:29 17 was presented. But the kind of emphasis on chronological
10:38:34 18 age and what pre-dates the other, that's -- that's a
10:38:37 19 problem.

10:38:37 20 MR. MELSHEIMER: Well, I understand, Your Honor.
10:38:39 21 And I guess -- again, please understand me. I'm not trying
10:38:43 22 to, you know, overviolate anything the Court has said. You
10:38:45 23 know I wouldn't do that intentionally.

10:38:46 24 THE COURT: One thing that would help is if you
10:38:48 25 would ask this witness non-leading questions and make him

10:38:51 1 testify. You have led him like a dog on a leash since he
10:38:57 2 went on the witness sides, but there's been no objection,
10:38:58 3 so...

10:38:58 4 MS. GLASSER: I just -- I don't want to make a big
10:39:00 5 deal in front of the jury of the leading stuff, but I -- I
10:39:04 6 agree.

10:39:04 7 MR. MELSHEIMER: Your Honor, I'm also trying to
10:39:05 8 avoid the problems that you're saying. But I'll -- I'll --
10:39:08 9 I can --

10:39:10 10 THE COURT: At a high level.

10:39:11 11 MR. MELSHEIMER: Thank you, Your Honor.

10:39:13 12 THE COURT: Okay. Let's proceed.

10:39:14 13 MS. GLASSER: Thank you, Your Honor.

10:39:15 14 (Bench conference concluded.)

10:39:23 15 THE COURT: Let's proceed.

10:39:24 16 Q. (By Mr. Melsheimer) Where is duplicate detection
10:39:30 17 performed in this chart that we have here on Exhibit 230,
10:39:36 18 Mr. Hecht?

10:39:36 19 A. It's performed in the back end process, but it's also
10:39:41 20 performed on some of the front end process.

10:39:44 21 Q. Has the issue of duplicate checks always been a problem
10:40:00 22 for the bank in check processing?

10:40:02 23 A. Yes, duplicate detection has been an issue since checks
10:40:06 24 were created many, many, many years ago.

10:40:08 25 Q. Are any of the back end features that you've been

10:40:12 1 talking about in this slide and generally, Mr. Hecht, are
10:40:17 2 any of them specific to mobile remote deposit capture?

10:40:21 3 A. No, none of them on this slide are specific to Mobile.

10:40:25 4 Q. Can we return to DTX-223, which is a pre-admitted
10:40:35 5 exhibit, Mr. Hecht? And I meant to bring this out earlier.

10:40:44 6 Is DTX-223 a -- a press release about Wells Fargo
10:40:49 7 announcing some new electronic deposit services?

10:40:54 8 A. Yes, sir, it is.

10:40:55 9 Q. And what does the highlighted sentence say?

10:40:57 10 A. It says: Wells Fargo is leading the way bringing
10:41:01 11 ability to deposit checks right from the customer's
10:41:05 12 desktop. The Desktop Deposit service is the first product
10:41:07 13 in the industry to be available online.

10:41:09 14 Q. Was this dated in 2005?

10:41:14 15 A. Yes, sir.

10:41:15 16 Q. Were the back end features that you were describing on
10:41:18 17 that other exhibit, were they also available in 2005?

10:41:22 18 A. Yes, they were.

10:41:23 19 Q. Remind us when Wells Fargo added mobile deposit as a
10:41:29 20 capability?

10:41:30 21 A. 2012.

10:41:31 22 Q. In your experience, when you add a front end source
10:41:38 23 such as mobile deposit, does that result in more checks
10:41:41 24 being deposited at the bank?

10:41:42 25 A. No, sir, it does not.

10:41:43 1 Q. Why not?

10:41:44 2 A. Because the checks just move. If you think about it --
10:41:49 3 if you have a check in your hand as a customer, you choose
10:41:52 4 where you want to deposit it so you don't get more volume
10:41:55 5 because you add a new channel. If you go to the ATM
10:41:59 6 machine or the branch or mobile deposit or Desktop Deposit,
10:42:00 7 it's one check that should be deposited one time.

10:42:02 8 Q. Would it be possible for Wells Fargo to have a
10:42:07 9 functioning mobile deposit system without all these back
10:42:12 10 end systems that you've described?

10:42:13 11 A. No, it would not.

10:42:13 12 Q. Did you make any changes to this back end
10:42:16 13 infrastructure after adding mobile deposit?

10:42:18 14 A. No, sir, we did not.

10:42:23 15 Q. Do you know how much it costs to develop, generally,
10:42:26 16 the back end infrastructure that you've described?

10:42:29 17 A. Hundreds -- millions of dollars for all the back end
10:42:35 18 infrastructure.

10:42:35 19 Q. Does the back end infrastructure comprise -- what does
10:42:46 20 it comprise in relationship to the front end
10:42:53 21 infrastructure? Is it -- is it less than half? More than
10:42:56 22 half?

10:42:56 23 A. Percent-wise, it's -- it's more than 80 percent of the
10:42:58 24 processing happens on the back end process.

10:43:02 25 Q. Now, Mr. Hecht, were you here for Mr. Weinstein's

10:43:17 1 testimony?

10:43:17 2 A. Yes, sir.

10:43:18 3 Q. Do you recall Mr. Weinstein testifying yesterday that
10:43:25 4 USAA invented certain fraud detection and prevention tools?

10:43:28 5 A. Yes, sir, I heard that.

10:43:29 6 Q. Is that claim consistent with your experience working
10:43:37 7 at Wells Fargo and other banks?

10:43:37 8 MS. GLASSER: Objection, Your Honor. It calls for
10:43:41 9 opinion testimony from a lay witness not disclosed.

10:43:41 10 THE COURT: Sustained.

10:43:44 11 Q. (By Mr. Melsheimer) Mr. Hecht, how long has Wells
10:43:48 12 Fargo employed these various fraud detection measures in
10:43:52 13 its deposit processing systems?

10:43:54 14 A. Really, since the beginning of check processing.

10:43:57 15 Q. When was the beginning of check processing?

10:44:04 16 A. Decades ago.

10:44:04 17 Q. In your experience, did Mobile Deposit create any brand
10:44:10 18 new kind of risk that wasn't already present with any
10:44:15 19 remote deposit system such as Desktop Deposit?

10:44:17 20 A. No, it did not.

10:44:18 21 Q. Now, were you here yesterday when Mr. Weinstein
10:44:22 22 suggested that Mobile Deposit created a new risk of fraud?

10:44:26 23 A. Yes, I heard that.

10:44:28 24 Q. Do you agree with that?

10:44:29 25 A. No, I do not agree with that.

10:44:30 1 MR. MELSHEIMER: Can we pull up Plaintiff's

10:44:32 2 Exhibit 436?

10:44:33 3 Q. (By Mr. Melsheimer) Do you have that in your binder,

10:44:48 4 as well, Mr. Hecht?

10:44:49 5 A. Yes, I do.

10:44:56 6 Q. Is this one of the documents that Mr. Weinstein

10:45:00 7 addressed yesterday?

10:45:01 8 A. Yes, it is.

10:45:02 9 Q. Now, did he address the entire document or just certain

10:45:05 10 portions of it?

10:45:06 11 A. Just certain portions.

10:45:08 12 Q. Do you think it's important to understand the entire

10:45:11 13 document in context?

10:45:12 14 A. It's really important --

10:45:14 15 MS. GLASSER: Objection, argumentative,

10:45:17 16 Your Honor.

10:45:17 17 THE COURT: Sustained.

10:45:18 18 MS. GLASSER: Motion to strike the answer.

10:45:23 19 THE COURT: I'll strike that question and answer.

10:45:30 20 Q. (By Mr. Melsheimer) Can we go to Slide 6, Mr. Hecht?

10:45:34 21 You see where it says: Risks will be mitigated by

10:45:58 22 introducing new controls and leveraging existing ones?

10:46:01 23 A. Yes, sir, I see that.

10:46:02 24 Q. Now, Mr. Hecht, are you familiar with the processes

10:46:06 25 displayed on this page?

10:46:06 1 A. Yes, sir, I am.

10:46:07 2 Q. Are any of them new processes?

10:46:09 3 A. No, all the processes on this page are existing.

10:46:12 4 Q. Were they processes created for the bank for -- and
10:46:16 5 used in other sources of check deposit?

10:46:20 6 A. Yes, they were created for other sources.

10:46:22 7 Q. Such as what?

10:46:23 8 A. Desktop Deposit, ATM, branches, all the deposit
10:46:30 9 sources, these were created for.

10:46:31 10 Q. If these aren't new processes, sir, can you explain to
10:46:35 11 the jury what your understanding is of the title that says
10:46:40 12 New Controls?

10:46:41 13 A. Yes. So the processes existed for all those other
10:46:46 14 channels like ATM and branch and Desktop Deposit, but the
10:46:50 15 controls are varying.

10:46:52 16 As a matter of fact, we can -- we vary our
10:46:55 17 controls because fraudsters are always trying to steal from
10:46:59 18 our customers or the bank every day. We literally make
10:47:01 19 adjustments as fraudsters come up with new schemes.

10:47:05 20 And so, especially when we introduce a new
10:47:09 21 channel, whether that be Desktop Deposit or whether that be
10:47:12 22 Mobile Deposit, we have to add new controls into the
10:47:17 23 existing processes. So the processes are all the same, but
10:47:22 24 the controls were absolutely different when it came on, and
10:47:24 25 then they continued to be adjusted every single day.

10:47:27 1 Q. What do you mean when you say you have to adjust the
10:47:34 2 controls frequently or every single day? Tell the jury
10:47:37 3 what you're talking about.

10:47:37 4 A. Sure. So limits on -- and we have limits in ATM
10:47:43 5 machines, like the amount that you can withdraw. Or we
10:47:46 6 have limits of the amount that you can deposit in a branch.
10:47:49 7 We have limits in the amounts that you can deposit in
10:47:55 8 mobile deposit.

10:47:55 9 And based on the risks that are happening, we
10:47:59 10 adjust those types of controls up and down because we've
10:48:05 11 got to measure customer experience with protecting the
10:48:08 12 customer's money and find that balance to make sure that
10:48:12 13 the fraudsters don't go -- go in and, again, take advantage
10:48:16 14 of our customers.

10:48:17 15 Q. Well, what are some of the new controls that are shown
10:48:23 16 on Page 6 of this Exhibit 436?

10:48:27 17 A. Yes. So if you look on the left where it says under
10:48:34 18 real-time controls, the daily and 30-day rolling limits.

10:48:39 19 So, again, as I mentioned, we have limits and have
10:48:42 20 had limits for a long time in, like, ATM machines, but we
10:48:49 21 had to define what those limits were going to be for mobile
10:48:53 22 deposits, and we set both daily limits and rolling limits
10:48:57 23 as to what customers would be able to do to actually,
10:49:02 24 again, strike that balance between what was -- what the
10:49:06 25 customer wanted and then also what we could do from a risk

10:49:10 1 perspective.

10:49:10 2 Q. Can you explain a little bit more what you mean by
10:49:14 3 that, adjusting the controls or the daily limits to balance
10:49:21 4 the risk to the bank and the customers' needs and desires?

10:49:27 5 A. Sure. So, again, as -- as things changes and we see
10:49:35 6 fraud schemes pop up, like what we would like to do is make
10:49:38 7 those limits unlimited because good customers, we want to
10:49:42 8 make that unlimited.

10:49:44 9 But if somebody steals your identity and comes in
10:49:48 10 and can drain your bank account, that's why we have a
10:49:52 11 limited like -- limiting to \$300.00 is the amount you can
10:49:55 12 take out on a daily basis.

10:49:56 13 You can call in and say, hey, I'm doing a special
10:50:00 14 withdrawal, and I want to -- I want to withdraw \$1,000.00
10:50:04 15 and we'll give you -- once we authenticate you, we will
10:50:07 16 give you that capability to do that withdrawal.

10:50:09 17 But if somebody gets your debit card and gets your
10:50:15 18 PIN, you don't want them to be able to drain your whole
10:50:18 19 account. So we limit them in that particular example.

10:50:21 20 Q. But what's an example -- so that's deposit -- excuse
10:50:24 21 me, that's withdrawals. What's an example of a limit on
10:50:27 22 deposits that might be risk-based?

10:50:29 23 A. Yes. So on deposits, we would limit, say, to
10:50:33 24 \$1,000.00. That's exactly what we did at the beginning of
10:50:37 25 Mobile Deposit, the amount that you could deposit on a

10:50:38 1 daily basis for that same reason. Because what fraudsters
10:50:42 2 will do is, you deposit a certain amount, and then they
10:50:46 3 wait for the amount of time until it becomes available, and
10:50:50 4 they suck that money out of your account. So we would
10:50:53 5 limit the amount that you could put in, but we had higher
10:50:58 6 limits, obviously, for mobile, if you go to a branch or if
10:51:01 7 you go to an ATM machine.

10:51:02 8 Q. Are the limits described there the application of an
10:51:07 9 existing process or a new process?

10:51:09 10 A. It's an existing process because, again, we had limits
10:51:12 11 in the other channels also, like an ATM machine, we have
10:51:16 12 limits as to the amount that you can deposit, and that's
10:51:18 13 been that way for many, many years for the same reason.

10:51:22 14 Q. If you'd look on the right-hand side of that slide,
10:51:29 15 Mr. Hecht, under the description Immediate Customer
10:51:35 16 Experience; do you see that?

10:51:36 17 A. Yes, I see that.

10:51:37 18 Q. And then it has zero dollar immediate availability,
10:51:42 19 primary fraud control, unlike ATM and BOB DTD today which
10:51:47 20 provides a hundred dollars immediately. Do you see that?

10:51:49 21 A. Yes I do.

10:51:50 22 Q. What is your understanding of that and how does it
10:51:53 23 relate to risk?

10:51:54 24 A. Yes. So at this time, as it states, if you made a
10:51:59 25 deposit in Desktop Deposit for our small business customers

10:52:02 1 or retail, or if you made a deposit in the ATM machine, we
10:52:07 2 gave you a hundred dollars of immediate credit. Meaning,
10:52:12 3 that right after you make that deposit, you can take out a
10:52:17 4 hundred dollars cash.

10:52:18 5 On the mobile deposit, that control, out of the
10:52:22 6 gate we set to zero. Because, again, the process is the
10:52:25 7 same where we -- we have the control to set exactly what is
10:52:29 8 available to the customer to withdraw, but the values are
10:52:32 9 different by channel. And at this point in time, it was
10:52:37 10 zero amount that we made available on mobile deposits.

10:52:40 11 Q. Did that change over time?

10:52:44 12 A. The zero on mobile deposit is still zero, but the other
10:52:47 13 ones are significantly changed. ATM and Desktop Deposit
10:52:52 14 are now -- in many cases we give a hundred percent
10:52:56 15 availability because we have new fraud screening
10:52:59 16 capabilities.

10:52:59 17 Q. So when -- when can a customer at Wells Fargo get
10:53:02 18 available funds after a mobile deposit under the current
10:53:05 19 controls?

10:53:05 20 A. The current controls, it's typically the next day --
10:53:08 21 the next business day, so about -- approximately 24 hours,
10:53:11 22 but it's one business day. But that could change, for
10:53:16 23 example, if we've seen fraud on the account recently. We
10:53:19 24 can actually extend availability out before -- until we can
10:53:23 25 check to make sure that the -- the funds are good.

10:53:30 1 MR. MELSHEIMER: Can we pull up, Mr. Bakale,
10:53:33 2 Plaintiff's Exhibit 1470?

10:53:35 3 Q. (By Mr. Melsheimer) Was this one of the documents that
10:53:44 4 Mr. Weinstein discussed a small portion of yesterday, sir?

10:53:48 5 A. Yes, sir.

10:53:48 6 MR. MELSHEIMER: Can we go to Slide 5 on Page 6,
10:53:52 7 Mr. Bakale?

10:53:53 8 Q. (By Mr. Melsheimer) And do you have a copy of this in
10:53:55 9 your binder, sir?

10:53:56 10 A. Sorry, what's the number again?

10:53:57 11 Q. 1470.

10:53:59 12 A. Yes.

10:53:59 13 Q. PX-1470?

10:54:02 14 A. I've got it.

10:54:03 15 Q. Are you with me?

10:54:24 16 A. Yes, I've got it.

10:54:25 17 Q. So do you see where did says fraud risk?

10:54:27 18 A. Yes.

10:54:28 19 Q. And it says --

10:54:29 20 MR. MELSHEIMER: Just highlight.

10:54:33 21 Q. (By Mr. Melsheimer) Mobile deposits does generate
10:54:34 22 additional risks to manage and monitor. The primary risk
10:54:38 23 is of duplicate deposit.

10:54:38 24 A. Yes, I see that.

10:54:40 25 Q. Now, did you agree with the way that Mr. Weinstein

10:54:42 1 characterized this document?

10:54:43 2 A. No, I did not.

10:54:44 3 Q. What is your understanding of what it's saying?

10:54:47 4 A. So there are additional risks, and really, the
10:54:53 5 duplicate risk was something that we were assessing at the
10:55:01 6 time, but it was not -- it was both duplicate and also
10:55:03 7 errors that we were focused on at this time. So this was
10:55:06 8 just a point in time concern that was on this slide.

10:55:12 9 Q. Now, is this looking at it after mobile deposit has
10:55:13 10 already happened, or is it looking at it as something that
10:55:16 11 is going to happen?

10:55:17 12 A. Yeah, it was looking at it into the future, so trying
10:55:19 13 to predict what was going to happen in the future before
10:55:22 14 we'd actually deployed mobile deposit.

10:55:26 15 Q. Now, are there solutions that are identified on the
10:55:30 16 left-hand side of the slide that were not shown or
10:55:36 17 highlighted yesterday?

10:55:36 18 A. Yes, sir, there are.

10:55:37 19 Q. All right. Can you take a look at on the left-hand
10:55:40 20 side of the page under payment management infrastructure?

10:55:42 21 A. Yes.

10:55:44 22 Q. Have you and I been talking about that quite a bit this
10:55:47 23 morning?

10:55:47 24 A. Yes, we have.

10:55:48 25 Q. Can you read for the jury what we're going to highlight

10:55:54 1 under -- starting with "a robust"?

10:55:57 2 A. Sure. A robust infrastructure already exists for the
10:56:01 3 downstream processing of deposits from multiple channels,
10:56:05 4 such as Envelope Free ATM and DTD, which is Desktop
10:56:10 5 Deposit.

10:56:10 6 Q. What is that saying, Mr. Hecht?

10:56:12 7 A. It's basically saying we're going to leverage that
10:56:15 8 robust infrastructure that we were talking about
10:56:18 9 previously, all the different controls, including the fraud
10:56:22 10 controls.

10:56:22 11 Q. Were you here for the videotape testimony of USAA's
10:56:30 12 inventor, Mr. Oakes?

10:56:32 13 A. Yes, sir, I was.

10:56:33 14 Q. Do you recall him saying that what we call back end
10:56:35 15 processing, that was already there?

10:56:37 16 A. Yes, I recall that.

10:56:38 17 Q. Is that consistent with your testimony that the back
10:56:41 18 end infrastructure was developed by the bank?

10:56:44 19 A. Yes.

10:56:48 20 MR. MELSHEIMER: Can we go to Page 9 and Slide 8
10:56:51 21 of this particular exhibit?

10:56:52 22 Q. (By Mr. Melsheimer) Did Mr. Weinstein show the jury
10:57:00 23 this slide?

10:57:01 24 A. No, he did not.

10:57:03 25 Q. Do you see where it says "draft controls"?

10:57:06 1 A. Yes, sir.

10:57:09 2 Q. What does draft controls mean?

10:57:14 3 A. Those are the different categories of processes that we
10:57:17 4 have in place in all the different channels. And that's
10:57:21 5 what that column represents.

10:57:23 6 Q. So just to go through, you have their eligibility,
10:57:28 7 limits, online duplicates. Can you just walk us through
10:57:32 8 generally just what those things mean at a high level?

10:57:34 9 A. Sure can. So eligibility is -- as it says, TOB, that's
10:57:40 10 time on the books. That's -- it's -- in -- in layman's
10:57:44 11 terms, that's really just how long the account was open
10:57:46 12 because fraudsters typically open accounts quickly and
10:57:50 13 perpetrate fraud early on. So the longer that we have
10:57:53 14 experience with a customer, the better.

10:57:55 15 And then limits are what we talked about before.
10:57:58 16 That's how much you can deposit on a daily basis, weekly
10:58:04 17 basis, monthly basis.

10:58:07 18 And then online duplicates, that's the process
10:58:10 19 where we actually look in channel -- and in channel, I mean
10:58:16 20 within, like, Desktop Deposit or Mobile, how long we're
10:58:19 21 going to look back to see if we've seen that check before.

10:58:25 22 Keep going down?

10:58:27 23 Q. Please, and go --

10:58:27 24 A. So --

10:58:27 25 Q. -- just go through the next two if you would, sir.

10:58:30 1 A. Okay. So holds, that's what I talked about before. We
10:58:35 2 can extend the holds. So if we have a reason to believe
10:58:38 3 that the check is suspect, we can hold it for -- and not
10:58:41 4 make it available for a longer period of time to protect to
10:58:44 5 make sure those funds are good.

10:58:46 6 And then cross-channel duplicates is slightly
10:58:49 7 different, and that's where a customer might deposit in
10:58:54 8 Mobile, but then also take that check and deposit it at a
10:59:02 9 branch, or they could actually take that check and deposit
10:59:02 10 it at Chase. And so that's cross-channel, to be able to
10:59:05 11 detect whenever that type of scenario occurs.

10:59:07 12 Q. Let me -- let me interrupt you.

10:59:09 13 Can that -- is that always an indication of fraud,
10:59:12 14 or could that be just an inadvertent mistake?

10:59:16 15 A. No. The majority of them are inadvertent mistakes.

10:59:19 16 Q. And how does that happen?

10:59:21 17 A. It's like -- I like to describe it as the customer/wife
10:59:26 18 scenario where the wife deposits a mobile deposit, leaves
10:59:30 19 it sitting on the counter, the husband comes home, and
10:59:33 20 takes that check to the bank because he thinks it hasn't
10:59:35 21 been deposited yet and deposits it again. So it wasn't
10:59:40 22 fraud, but it was an accident, but that happens in large
10:59:43 23 volume every day.

10:59:44 24 Q. Go through the next two draft controls, if you would,
10:59:48 25 sir, and briefly explain them.

10:59:50 1 A. Yeah. So the -- that first one was actually same day,
10:59:53 2 and that's a more common thing that we see -- kind of the
10:59:56 3 transactions happen within the same day.

10:59:58 4 And then the next one where it says cross-channel,
11:00:02 5 it's that same scenario, but it's over a longer period.
11:00:05 6 And that's -- when you get over a longer period because
11:00:11 7 fraudsters have figured it out, that's more likely to be
11:00:11 8 fraud.

11:00:11 9 So fraudsters are actually tracking the number of
11:00:14 10 days that we're looking for cross-channel duplicates. And
11:00:17 11 they wait until the day after. And then they make the
11:00:20 12 deposit to try and get the funds or get the check to be
11:00:24 13 cashed or get the money available.

11:00:25 14 And then additional is really just the obligatory
11:00:32 15 additional things that we do. We do a ton of things in the
11:00:35 16 back end processes that we -- we are looking for to find
11:00:38 17 things that are out of patterns for customers or find
11:00:42 18 situations where we know that it's a transaction that we
11:00:45 19 should be looking for. We call that a hot list type of
11:00:49 20 transaction that we look for. So that's what the
11:00:51 21 additional is.

11:00:52 22 Q. Were any of these controls created specifically for
11:00:59 23 mobile deposit, or had they been part of the bank systems
11:01:02 24 previously?

11:01:02 25 A. Every single one of them is an existing process that

11:01:06 1 was there, and all we did was change the controls

11:01:10 2 specifically to the new channel.

11:01:11 3 Q. Is mobile deposit the only source of checks within the
11:01:25 4 bank that require duplicate detection?

11:01:28 5 A. No. Every source requires duplicate detection.

11:01:31 6 Q. Why does every source of checks require duplicate
11:01:35 7 detection?

11:01:35 8 A. Because as I mentioned earlier, duplicates are
11:01:39 9 something that can happen since checks were created, and it
11:01:42 10 could have been just a problem inside the bank where they
11:01:45 11 processed the check twice. That's happened. That's
11:01:47 12 still -- that's an error that can happen.

11:01:49 13 But, again, it -- it did become more of a problem
11:01:52 14 whenever we -- whenever Check 21 went in and we started
11:01:55 15 with electronic deposits. The biggest problem we had was
11:01:58 16 with other banks sending us files twice or sending us
11:02:02 17 substitute checks. They -- they print more than once.

11:02:05 18 So those -- that's -- duplicate happens.

11:02:11 19 Especially in electronic world we really have to protect
11:02:14 20 our customers by looking to see if we have seen that check
11:02:18 21 before.

11:02:18 22 Q. Did you have some experience in the early days of check
11:02:21 23 imaging, Mr. Hecht, where you would be getting thousands or
11:02:25 24 hundreds of thousands of duplicate checks from the Federal
11:02:29 25 Reserve?

11:02:29 1 A. Yes, sir.

11:02:30 2 Q. Explain to the jury how that could happen?

11:02:32 3 A. So at the very beginning of this, I mentioned that, you
11:02:35 4 know, the law changed with Check 21 that you could present
11:02:40 5 a substitute check. And with the substitute check, many
11:02:44 6 banks, especially the Federal Reserve, invested in large
11:02:51 7 printers all over the country to eliminate having to send
11:02:54 8 them on a plane.

11:02:55 9 And so what they would do is they would print --
11:02:58 10 so they captured the check, say, in Atlanta and the check
11:03:04 11 was for California, they would try to print them as close
11:03:08 12 to California as they could so you didn't have to transport
11:03:11 13 them.

11:03:11 14 The problem that they had -- and if you just think
11:03:13 15 about like your printer at home, those things would jam,
11:03:16 16 and then they'd have to start it over. And then they'd
11:03:18 17 print it again, and they've got a whole pile of checks that
11:03:21 18 they've already printed, and they were sending those same
11:03:24 19 checks and the new ones that they'd printed twice.

11:03:26 20 And so if you just think about that from a
11:03:28 21 customer perspective, we, as customers -- you know, if you
11:03:32 22 made your auto payment or your mortgage payment and it's
11:03:35 23 300 bucks, 500 bucks, that money hits your account twice
11:03:40 24 and the money is gone until the bank figures it out and
11:03:43 25 adjusts that back out of your account when it's a

11:03:43 1 duplicate.

11:03:44 2 So that -- that was a new thing that was created.

11:03:46 3 But, again, that could happen even before this

11:03:49 4 electronification.

11:03:51 5 But that printing process with -- that was

11:03:52 6 happening with the banks was a major problem where the

11:03:56 7 printers were jamming or they were just accidentally

11:04:00 8 running a print job twice and sending the printed checks

11:04:03 9 out twice. I mean, that was obviously much different than

11:04:06 10 you had -- when you had to present the physical check.

11:04:09 11 Q. In your binder, sir, there's a document marked as

11:04:14 12 DTX-267.

11:04:14 13 MR. MELSHEIMER: And, Mr. Bakale, do not display
11:04:17 14 this to the jury.

11:04:17 15 Q. (By Mr. Melsheimer) But if you could pull it up, sir,

11:04:20 16 in your binder and look at it for me and tell me when

11:04:22 17 you're there.

11:04:29 18 A. I am there.

11:04:29 19 Q. Was the information in this document made by or from

11:04:32 20 information transmitted by a person with knowledge of the

11:04:35 21 events or conditions recorded?

11:04:37 22 A. Yes.

11:04:37 23 Q. Was this document made at or near the time of the

11:04:43 24 events or conditions recorded?

11:04:45 25 A. Yes, it was.

11:04:45 1 Q. Was this document made or kept in the regular course of
11:04:49 2 Wells Fargo's business?

11:04:50 3 A. Yes.

11:04:50 4 Q. Let me say made and kept in the regular course of Wells
11:04:55 5 Fargo's business?

11:04:56 6 A. Yes.

11:05:02 7 MR. MELSHEIMER: Your Honor, we offer DTX-267
11:05:03 8 under the same proviso that was previously discussed.

11:05:06 9 THE COURT: Is there objection?

11:05:07 10 MS. GLASSER: There is. It may be better
11:05:09 11 explained at the bench.

11:05:11 12 THE COURT: Approach the bench.

11:05:13 13 (Bench conference.)

11:05:19 14 MS. GLASSER: So, Your Honor, he said some of the
11:05:26 15 words from the business records foundation requirement, but
11:05:29 16 it's readily apparent from the document it's not a business
11:05:33 17 record of activities made at -- made in the course of
11:05:36 18 business of Wells Fargo.

11:05:37 19 These are the first two slides. The business
11:05:42 20 about -- it appears to be some sort of an external
11:05:45 21 presentation rather than any sort of record of actual
11:05:50 22 business activities. And so I think they want to show it
11:05:55 23 because it's got some statements like this, which, again,
11:05:57 24 are just going to be yet again making the same point, it's
11:06:02 25 old technology, right, which he's already made a couple of

11:06:05 1 times over Your Honor's admonitions.

11:06:08 2 THE COURT: All right. Well, let's -- let's turn
11:06:09 3 to whether or not they are actual records of the bank.

11:06:11 4 These photographs that say, my kids, those are
11:06:14 5 bank records?

11:06:15 6 MR. MELSHEIMER: Yes, Your Honor. It was a
11:06:17 7 presentation that he gave while employed by the bank at a
11:06:23 8 conference. And it was -- it was an introduction to who he
11:06:27 9 is and things of that nature.

11:06:29 10 I'm not -- if the Court wants to excise those, I'm
11:06:32 11 not pushing those. That's the whole PowerPoint, though.
11:06:37 12 He talks about -- the substance of it is in the other
11:06:43 13 slides, but this was maintained within the bank, and it was
11:06:46 14 a presentation he had given inside the bank.

11:06:48 15 MS. GLASSER: And I don't dispute that it may have
11:06:51 16 been created while he was at the bank. That's not records
11:06:54 17 of the bank's activities, so this is not a good example.
11:06:57 18 It's another -- it's sort of a retrospective diagram of, he
11:06:59 19 says, traditional check capture.

11:07:01 20 So whether it was created for some external
11:07:05 21 conference, it's clearly not a record of the business's
11:07:10 22 actual activities made at the time of those activities.

11:07:13 23 THE COURT: If he's at a conference as a
11:07:15 24 representative of the bank while in the employment of the
11:07:17 25 bank and making a presentation, that's a part of his

11:07:20 1 employment.

11:07:25 2 MS. GLASSER: Well, I agree with that.

11:07:26 3 THE COURT: It doesn't have to transpire within
11:07:28 4 the four walls of the bank building to be a bank record.

11:07:31 5 MS. GLASSER: It does need to be made -- recording
11:07:33 6 events at or about the time that they actually occurred.
11:07:36 7 And what this is is a hearsay document put together at some
11:07:39 8 later point in time about activities in the past. The fact
11:07:42 9 that it was made while he was working doesn't satisfy that
11:07:45 10 part of the test.

11:07:47 11 THE COURT: Are you saying that this PowerPoint
11:07:50 12 presentation was not created at or about the time he made
11:07:52 13 the presentation on behalf of the bank?

11:07:55 14 MS. GLASSER: I have no idea about that. But the
11:07:57 15 standard is you have to be -- the things that you're
11:08:02 16 recording in the document have to be things that are being
11:08:06 17 recorded at or about the time that they happened. If it
11:08:09 18 was just -- it has to be made at or about the time it was
11:08:12 19 made, then every document made at work would satisfy.

11:08:14 20 But the idea it's supposed to be accurate in the
11:08:17 21 sense of somebody doing the regular business activities,
11:08:20 22 writing them down at that time, this is somebody maybe at
11:08:24 23 work, maybe not, writing down some activities that
11:08:28 24 happened, if at all, in the past.

11:08:30 25 MR. MELSHEIMER: Your Honor, he's -- so that would

11:08:34 1 exclude from the business records exception of a lot of
11:08:39 2 documents.

11:08:39 3 THE REPORTER: Judge?

11:08:39 4 THE COURT: You're going to have to --

11:08:42 5 MR. MELSHEIMER: The point is, this is all stuff
11:08:46 6 that he put together. Some of it is historical, some of it
11:08:52 7 is background information, but it is all his knowledge of
11:08:54 8 events and processes and how they work. He didn't put them
11:08:59 9 together at or around the time that the document is being
11:09:02 10 communicated.

11:09:03 11 So I don't -- I really think there's an objection
11:09:07 12 to the business record predicate. It's been laid. He's
11:09:11 13 answered the questions to lay the predicate, which is a
11:09:14 14 pretty slim evidentiary basis to -- I mean, it's not a
11:09:18 15 heavy burden to satisfy that.

11:09:20 16 And so I would submit that the other objections
11:09:23 17 really go to relevance or some other issue, which was not
11:09:25 18 the basis for the objection, conditional. The ruling by
11:09:30 19 the Magistrate, as I understand it, was if we could prove
11:09:33 20 this up as a business record, it would come in, not that
11:09:36 21 there's all these individual pieces of it that are somehow
11:09:40 22 inappropriate.

11:09:40 23 THE COURT: I'm going to limit my consideration to
11:09:43 24 whether it does or doesn't fall within the business records
11:09:46 25 exception.

11:09:46 1 If there were other substantive bases to challenge
11:09:50 2 it, they should have been challenged before the Magistrate
11:09:53 3 at the pre-trial ruling. I'll assume because the
11:09:57 4 Magistrate indicated that it was pre-admitted if a business
11:10:01 5 record -- proper business records predicate could be laid,
11:10:04 6 that any other material or substantive objection either
11:10:08 7 wasn't urged or it's been urged and overruled.

11:10:11 8 MR. MELSHEIMER: Correct.

11:10:12 9 MS. GLASSER: And a document like this is kind of
11:10:14 10 the classic in addition to one of the children, right?
11:10:17 11 This is not a business -- a record of a business made at or
11:10:21 12 about the time of the business' activity. This is just --

11:10:26 13 THE COURT: I'm going to -- I'm going to find that
11:10:29 14 the business records predicate has been met. You can
11:10:33 15 certainly challenge these kind of issues on
11:10:36 16 cross-examination.

11:10:38 17 MS. GLASSER: Well, Your Honor, I think I'm just
11:10:40 18 going to be putting a giant spotlight on the problem if I
11:10:45 19 try to go into this in cross. The jury doesn't know the
11:10:47 20 evidentiary rules. The document says -- this is a claim
11:10:49 21 element, right? It's pretty much the same -- it's existed
11:10:52 22 since the beginning. This is not an at-the-time business
11:10:56 23 records statement.

11:10:58 24 MR. MELSHEIMER: You're not going talk about the
11:11:02 25 patent claim at this time. If she wants to --

11:11:05 1 THE COURT: I think that the -- I think that the
11:11:07 2 Plaintiff's arguments on the business records exception are
11:11:10 3 overly narrow, and I think this probably falls within a
11:11:14 4 broader reading of the exception. So I'm going to find
11:11:16 5 that the business records exception has been met.

11:11:18 6 Anything else about this should have been
11:11:20 7 challenged before now, and I'm not going to reopen that.

11:11:23 8 MR. MELSHEIMER: Thank you.

11:11:23 9 THE COURT: So you're permitted to proceed with
11:11:25 10 it.

11:11:25 11 MR. MELSHEIMER: Thank you.

11:11:26 12 MS. GLASSER: Thank you.

11:11:27 13 (Bench conference concluded.)

11:11:37 14 MR. MELSHEIMER: May I have just a moment,
11:11:39 15 Your Honor?

11:11:39 16 THE COURT: You may.

11:11:54 17 MR. MELSHEIMER: Mr. Bakale, can we display for
11:11:59 18 the jury, DTX-267?

11:12:06 19 Q. (By Mr. Melsheimer) Mr. Hecht, what is Defendant's
11:12:09 20 Exhibit 267?

11:12:10 21 A. This is a presentation that I did at BAI/ECCHO check
11:12:20 22 Image Conference in 2005.

11:12:23 23 Q. Why did you prepare this presentation in 2005?

11:12:27 24 A. It was really to talk to the industry -- the banking
11:12:33 25 industry and the financial services industry about

11:12:36 1 duplicate detection and duplicate prevention.

11:12:39 2 Q. What is BAI/ECCHO, or ECCHO?

11:12:47 3 A. It's two banking organizations. BAI, I forget what it
11:12:52 4 is, but, again, they are -- the rules -- the ECCHO is the
11:12:57 5 rules organization that was helping us to facilitate the
11:13:01 6 rules that we were going to use for image exchange and
11:13:05 7 image processing in general.

11:13:09 8 MR. MELSHEIMER: Can you go, Mr. Bakale, to Page 4
11:13:11 9 of the presentation?

11:13:15 10 Q. (By Mr. Melsheimer) And just to remind the jury, sir,
11:13:17 11 what was the overall subject of this presentation that you
11:13:20 12 were giving back in 2005?

11:13:22 13 A. Yeah, and it was duplicate prevention and duplicate
11:13:29 14 detection.

11:13:29 15 Q. So you have a duplicate posting topics, and you have a
11:13:35 16 series of bullet points here, what is being illustrated on
11:13:39 17 this slide, sir?

11:13:40 18 A. Yeah, so what I was talking about here is some of the
11:13:43 19 things that we were talking about before where, first of
11:13:47 20 all, we were describing what the problem was.

11:13:49 21 I talked earlier about the printing, and IRD is
11:13:54 22 the image replacement document or the substitute checks,
11:13:56 23 and that's what I was talking about where we had the
11:13:58 24 printing problem.

11:14:00 25 But because that was -- at this time, we had a

11:14:04 1 major issue, as I talked about before, with duplicate
11:14:08 2 print, and thousands of checks at a time coming in and
11:14:10 3 posting to customers' accounts, not because of fraud but
11:14:13 4 because of accidents that were happening at banks in the
11:14:16 5 printing process. That's what the IRD was.

11:14:20 6 And then the next one was about that, you know,
11:14:23 7 duplicates have been around -- around for a long time, and
11:14:25 8 that's also what I was talking about before, even back at
11:14:28 9 the early days.

11:14:30 10 You could have a jam on one of those 3890 sorters
11:14:33 11 where the checks would all get stuck just like a printer,
11:14:37 12 and then the operator would have to pull those checks out
11:14:38 13 and put the ones that had been captured in so that they
11:14:43 14 don't get captured again, but it always -- not always, but
11:14:46 15 it frequently happened that the operator would not restart
11:14:48 16 it correctly and potentially run additional checks through,
11:14:51 17 and we got duplicates. And, again, that is not -- that's
11:14:55 18 been there since the beginning of check processing.

11:14:59 19 And then prevention is really stopping the
11:15:02 20 duplicate before it happens.

11:15:04 21 So at Wells and other banks, we have this concept
11:15:07 22 of what's called in-channel duplicate detection where we
11:15:11 23 can actually look for the duplicates as they're going
11:15:14 24 through.

11:15:15 25 So if it's going through the teller system and the

11:15:17 1 teller actually scans the same check twice, we stop the
11:15:20 2 teller and tell them that, oh, you just scanned that check
11:15:23 3 twice, and we do that over many days because it could
11:15:27 4 happen across days.

11:15:29 5 So that's what prevention is. You stop it before
11:15:32 6 it happens.

11:15:33 7 But detection is really what -- what I said in
11:15:37 8 this presentation is more important. And that's the
11:15:41 9 husband and wife scenario that I talked about. Because,
11:15:45 10 there again, it was just -- it wasn't that it was sitting
11:15:49 11 in front of them. It's just that you go home, it's sitting
11:15:52 12 on the counter, and you say, oh, this needs to go to the
11:15:54 13 bank, and it goes through again.

11:15:56 14 So in that scenario, we were looking across
11:16:00 15 channels so if it came in through the branch and it came in
11:16:04 16 through mobile deposit or it came in through Desktop
11:16:07 17 Deposit, we would compare and find that, and it could be
11:16:11 18 weeks later.

11:16:11 19 So at the time we started this, it was 90 days for
11:16:14 20 the -- what we called cross-channel duplicates, and that's
11:16:18 21 90 business days. Now we're up to almost nine months that
11:16:24 22 we do that on our process to actually do detection on the
11:16:27 23 back end to find whenever we see transactions or checks
11:16:30 24 that are coming in through multiple channels.

11:16:33 25 And then I've got -- when it says solving the

11:16:39 1 duplicate problems, we went to this conference to share
11:16:43 2 this with others so that they could see here's how you need
11:16:46 3 to solve the problem. Because if you think about
11:16:48 4 duplicates in this new paradigm that we're dealing with in
11:16:52 5 Check 21, it was really important that all banks did this
11:16:54 6 because we were impacting each other's customers.

11:16:59 7 So, for example, if, you know -- I'll just pick on
11:17:03 8 Chase, if they're printing their checks and they print them
11:17:06 9 twice, they have checks in there for almost every bank, and
11:17:09 10 they print them twice. So that means customers at every
11:17:12 11 bank in the country would be impacted.

11:17:15 12 And the same thing is true at Wells Fargo. If we
11:17:18 13 print the checks twice, we could impact customers at every
11:17:22 14 bank in the country.

11:17:23 15 So it was really important for all the banks to
11:17:25 16 embrace this concept to protect our customers from the
11:17:30 17 duplicate phenomenon that was happening with this new
11:17:34 18 scenario with this substitute check and then subsequently
11:17:39 19 with the image processing where the customers and/or the
11:17:41 20 businesses could keep the checks instead of delivering them
11:17:44 21 to the bank.

11:17:45 22 Q. Mr. Hecht, this presentation, remind the jury
11:17:53 23 chronology-wise where this presentation occurred in
11:17:58 24 relation to Wells Fargo's introduction of remote mobile
11:18:03 25 deposit.

11:18:03 1 A. Yes, so as we mentioned before, we launched our Desktop
11:18:06 2 Deposit on October 28th, 2004, which was the first day it
11:18:10 3 was legal, and we had to have these duplicate protections
11:18:13 4 in early. And so we were building this even before 2004
11:18:18 5 because we knew checks -- the Check 21 rule was coming, and
11:18:21 6 we knew that this phenomenon was about to become a big
11:18:25 7 problem, especially with the early printing process. We
11:18:29 8 just knew that that was going to be an issue.

11:18:30 9 So we built -- we started building it, and then we
11:18:34 10 had it in place in 2005, fully in place, both the front end
11:18:40 11 duplicate detection where we would check at Desktop Deposit
11:18:43 12 to see if a customer was scanning on the Desktop Deposit
11:18:46 13 more than once, and then also this back end process that
11:18:50 14 was the cross-channel, to see if it was coming in from
11:18:54 15 multiple channels. Or we would even -- we even detect it
11:18:57 16 if it comes in from another bank double. Because a
11:19:01 17 customer could deposit it at one bank and then take that
11:19:03 18 check to a totally different bank. It doesn't mean that it
11:19:06 19 would be Wells to Wells.

11:19:07 20 You could take that check, instead of going and
11:19:11 21 depositing it at Wells Fargo Mobile, you could take it to
11:19:15 22 Chase branch and deposit it there. But if it's a Wells
11:19:20 23 Fargo check, it would come back to Wells Fargo.

11:19:21 24 And that's why it was really important to detect
11:19:23 25 that before it posted to the customer's account. We didn't

11:19:27 1 want it to post twice and then have to wait days for the
11:19:31 2 customer to call back in and say, why did my mortgage
11:19:34 3 payment actually hit my account twice? Because in that
11:19:37 4 time you don't have access to that money. It's really
11:19:38 5 important to move that up and make sure that we could
11:19:41 6 detect that before it impacted the customer.

11:19:44 7 Q. Mr. Hecht, I'm going to ask you just to remember the
11:19:46 8 Court's admonition to slow down a little bit.

11:19:49 9 A. Oh, sorry about that.

11:19:50 10 Q. Thank you.

11:19:51 11 I want to talk to you about a couple of other
11:19:56 12 fraud detection tools that were mentioned in the trial.

11:19:59 13 Have you heard of something called amount
11:20:01 14 verification?

11:20:02 15 A. Yes, sir.

11:20:03 16 Q. What is amount verification?

11:20:05 17 A. Amount verification is where we validate that the
11:20:10 18 amount that was declared is the amount that's also in
11:20:14 19 what's called the courtesy box where you write the numbers
11:20:18 20 and also the legal amount on the check where you write out
11:20:22 21 the number or the amount of the check.

11:20:24 22 Q. How long has Wells Fargo been verifying the amounts on
11:20:28 23 checks?

11:20:28 24 A. Again, since the beginning of checking. We have to
11:20:32 25 verify the amount, especially between those two fields

11:20:37 1 because the reason it's called the legal amount is,
11:20:39 2 although many people think that the most important thing is
11:20:42 3 writing the numbers out, legally what's important is the
11:20:46 4 legal amount where you write it out. That is the
11:20:49 5 definitive number that the banks are held to when we clear
11:20:52 6 the check.

11:20:52 7 Q. Was amount verification something that Wells Fargo was
11:20:56 8 doing --

11:20:58 9 MS. GLASSER: Objection, Your Honor. Approach the
11:21:00 10 bench?

11:21:01 11 THE COURT: Approach the bench, counsel.

11:21:03 12 (Bench conference.)

11:21:06 13 MS. GLASSER: Your Honor, I'm not sure what to do.
11:21:09 14 I don't want to be disruptive jumping up every question,
11:21:12 15 but he's just doing exactly what he said he wouldn't do
11:21:15 16 with all the going through the claim elements, saying it's
11:21:19 17 old. It just -- I don't know how we put a stop to it, but
11:21:24 18 I don't want to pop up every single question, but he's just
11:21:26 19 taking advantage of that and asking it over and over.

11:21:29 20 THE COURT: There's some merit to this,
11:21:31 21 Mr. Melsheimer, you're well below a high level.

11:21:33 22 MR. MELSHEIMER: I will try to --

11:21:35 23 THE COURT: I'm not sure if this witness knows how
11:21:37 24 to stay up out of the weeds. He's that kind of a person.

11:21:41 25 MR. MELSHEIMER: Oh, well, I believe I can fix

11:21:43 1 that, Your Honor, in the next few questions if you'll
11:21:47 2 permit me to do so.

11:21:48 3 MS. GLASSER: I -- literally, Your Honor, we
11:21:49 4 request -- he's gone -- he's gone so far beyond what he
11:21:51 5 told you in chambers he was going to do already.

11:21:54 6 THE COURT: A lot of what we're doing is just
11:21:57 7 repetitive.

11:21:57 8 MR. MELSHEIMER: Agreed, Your Honor. But that's
11:21:58 9 what I'm saying, I think this is self -- self-solving.

11:22:00 10 THE COURT: How much longer do you think it's
11:22:02 11 going to go?

11:22:03 12 MR. MELSHEIMER: About five minutes.

11:22:04 13 THE COURT: Let's proceed.

11:22:04 14 MR. MELSHEIMER: Thank you.

11:22:05 15 (Bench conference concluded.)

11:22:11 16 THE COURT: Let's proceed.

11:22:26 17 Q. (By Mr. Melsheimer) Mr. Hecht, I want to move on to a
11:22:28 18 different topic.

11:22:30 19 You told us at the beginning that you're here
11:22:33 20 as -- as Wells Fargo's corporate representative?

11:22:35 21 A. Yes, sir.

11:22:36 22 Q. And you've heard the various allegations that USAA has
11:22:42 23 made throughout the trial?

11:22:43 24 A. Yes, sir.

11:22:44 25 Q. Now, were you here in the opening statement when the

11:22:54 1 counsel for USAA suggested that Wells Fargo had copied work
11:23:01 2 that USAA had done because individuals at the bank had
11:23:06 3 looked at screenshots of USAA's mobile application? Do you
11:23:11 4 recall that?

11:23:12 5 A. Yes, I recall that.

11:23:15 6 Q. Are screenshots of an application publicly available?

11:23:17 7 A. Yes, sir, they are.

11:23:19 8 Q. Based on your experience, can -- can you learn anything
11:23:23 9 about the internal features of the operation of a mobile
11:23:29 10 application simply by looking at a publicly available user
11:23:32 11 interface?

11:23:33 12 There's an objection, so don't answer.

11:23:35 13 MS. GLASSER: Objection, Your Honor. It calls for
11:23:38 14 expert testimony. Also undisclosed.

11:23:40 15 THE COURT: You're going to have to say that where
11:23:42 16 I can hear you, counsel.

11:23:42 17 MS. GLASSER: Apologies, Your Honor. It calls for
11:23:45 18 expert testimony and speculation. It was also undisclosed.

11:23:54 19 THE COURT: Restate the question, counsel.

11:23:56 20 Q. (By Mr. Melsheimer) Mr. Hecht, can -- can you learn
11:24:00 21 anything about the internal functions of the USAA mobile
11:24:05 22 application by looking at publicly available screenshots?

11:24:08 23 MS. GLASSER: Same objection, Your Honor. It's
11:24:10 24 calling for expert --

11:24:11 25 THE COURT: Sustained.

11:24:19 1 Q. (By Mr. Melsheimer) Are you familiar with Wells

11:24:20 2 Fargo's mobile application?

11:24:23 3 A. Yes, sir.

11:24:24 4 Q. Do the -- do the Wells Fargo mobile application

11:24:29 5 screenshots provide insight into how the source code of the

11:24:34 6 product actually works?

11:24:37 7 A. I know they do not.

11:24:39 8 Q. Why not?

11:24:39 9 A. Because the screenshots don't have any specific bearing

11:24:45 10 on exactly how we would code the underlying capabilities.

11:24:50 11 The screenshots are just the screenshots.

11:24:53 12 Q. Are Wells Fargo's screenshots of its application, the

11:24:59 13 menus, the different aspects of it, are those confidential?

11:25:03 14 A. They are not.

11:25:04 15 Q. Where can you find screenshots or information about

11:25:21 16 Wells Fargo's mobile application?

11:25:24 17 A. You can find them on YouTube, you can find them in the

11:25:29 18 Google Play Store, you can find them in the Apple store,

11:25:32 19 you can find them all over. It's common and expected that

11:25:36 20 our Wells Fargo screenshots and all the things that we have

11:25:43 21 available to our customers are available online.

11:25:45 22 Q. Have you seen screenshots and videos of other banks'

11:25:51 23 mobile applications in the places you describe?

11:25:53 24 A. Yes, I have. It's common.

11:25:54 25 Q. Anything wrong with you looking at those?

11:25:56 1 A. No, it's -- it's what all competitors do. It's really
11:26:00 2 important to understand what your competitors are doing.

11:26:03 3 Q. Are you bothered by anyone looking at Wells Fargo's
11:26:05 4 screenshots?

11:26:06 5 A. No, it's -- again, it's expected that they'll look at
11:26:10 6 everything that we do.

11:26:17 7 Q. Has it been your practice within the 30-plus years
11:26:21 8 you've been in the banking business to review publicly
11:26:24 9 available information from other banks?

11:26:26 10 A. Yes, it's -- it's absolutely common.

11:26:28 11 Q. Well, why?

11:26:29 12 A. It's -- again, it's really just what you do in -- in
11:26:34 13 business. You know, it's really important whether
11:26:38 14 you're -- you're in banking or anywhere else to understand
11:26:43 15 exactly what's happening.

11:26:44 16 So, you know, you can pick any industry. Every
11:26:48 17 major company or even small companies -- you know, they'll
11:26:52 18 go and investigate, you know, what are my competitors
11:26:56 19 doing? Is there something that I should be looking at for
11:26:59 20 my customers? And, again, looking at publicly available
11:27:03 21 information, it's just commonplace across the business
11:27:08 22 landscape, period.

11:27:10 23 Q. I want to go back to something just very briefly.
11:27:14 24 Two -- two quick topics, endorsement checking and customer
11:27:21 25 authentication I just want to ask you a very narrow

11:27:24 1 question about that.

11:27:25 2 Are those controls, endorsement verification and
11:27:30 3 customer authentication, are those done in connection with
11:27:32 4 other channels of check deposit other than mobile deposit?

11:27:35 5 A. Yes, sir.

11:27:36 6 Q. Why do those things need to be done in other channels
11:27:45 7 of check deposit, meaning customer -- customer
11:27:50 8 authentication and endorsement checking?

11:27:52 9 A. Yes. Because those are requirements from a deposit
11:27:56 10 perspective for every channel. So of the hundreds of
11:28:01 11 channels that we looked at, that's -- you have to know who
11:28:06 12 the customer is that's making the deposit. It's really
11:28:08 13 important, again, going back to the fraud discussion that
11:28:12 14 we had earlier.

11:28:14 15 And then it's also important because it's the law
11:28:17 16 that the check must be endorsed on the back by whoever is
11:28:23 17 depositing it.

11:28:24 18 So both those things are a requirement both to
11:28:26 19 make sure that the transaction is safe and sound.

11:28:30 20 Q. Mr. Hecht, just a couple more questions. I want to go
11:28:33 21 back to this question about the back end versus the front
11:28:38 22 end and the relative cost of developing both. Do you have
11:28:41 23 a sense based on your own --

11:28:46 24 MS. GLASSER: Objection, sidebar, Your Honor.

11:28:48 25 THE COURT: Approach the bench.

11:28:49 1 MS. GLASSER: Oh, I'm sorry, I was just objecting
11:28:52 2 to the sidebar.

11:28:53 3 MR. MELSHEIMER: Oh, I'm sorry. I didn't
11:28:54 4 understand you. I'm sorry.

11:28:55 5 THE COURT: Well, Mr. Melsheimer, it's really not
11:29:04 6 proper to have a lengthy statement about what you want to
11:29:05 7 talk about, and then proceed to ask a question.

11:29:10 8 MR. MELSHEIMER: I can rephrase the question, Your
11:29:11 9 Honor, if it please the Court.

11:29:13 10 THE COURT: Let's -- let's go to the question
11:29:15 11 part, not the statement part.

11:29:16 12 MR. MELSHEIMER: Yes, Your Honor.

11:29:17 13 THE COURT: Ask your question.

11:29:18 14 Q. (By Mr. Melsheimer) What is the relative cost of
11:29:22 15 development of the back end processing systems that you
11:29:26 16 described versus the front end processing systems that you
11:29:29 17 described, if you know?

11:29:30 18 A. Yes, it's much, much greater order of magnitude,
11:29:36 19 greater.

11:29:36 20 Q. Can you give us any better number or a different
11:29:39 21 number?

11:29:39 22 A. At least 80 percent more from the back end perspective.

11:29:44 23 Q. Mr. Hecht, does Wells Fargo respect USAA's intellectual
11:29:47 24 property?

11:29:47 25 A. Absolutely.

11:29:57 1 Q. Do you expect USAA to respect your contributions, as
11:30:02 2 well?

11:30:02 3 A. Yes. It's -- it really is a two-way street. You need
11:30:05 4 to respect everybody's property.

11:30:07 5 Q. Including the contributions that have been made by you
11:30:10 6 and others at Wells Fargo?

11:30:11 7 A. Absolutely, yes.

11:30:14 8 MR. MELSHEIMER: May it please the Court. May I
11:30:15 9 have a moment, Your Honor?

11:30:16 10 THE COURT: Take a moment.

11:30:28 11 Q. (By Mr. Melsheimer) Thank you, Mr. Hecht.

11:30:29 12 MR. MELSHEIMER: Your Honor, I tender Mr. Hecht
11:30:32 13 for cross-examination.

11:30:33 14 THE COURT: All right. You pass the witness?

11:30:36 15 MS. GLASSER: May I have permission to approach
11:30:38 16 the witness?

11:30:39 17 THE COURT: Well, before we start with
11:30:40 18 cross-examination by Plaintiff, we're going to break for
11:30:43 19 lunch. So you can prepare over the lunch hour and be ready
11:30:46 20 to go when we come back.

11:30:48 21 MS. GLASSER: Will do, Your Honor.

11:30:49 22 THE COURT: Ladies and gentlemen of the jury, if
11:30:50 23 you'll simply close your notebooks, but please take them
11:30:53 24 with you over the lunch hour to the jury room. Follow all
11:30:55 25 the instructions I've given you, including not to discuss

11:30:58 1 the case among yourselves.

11:31:01 2 It's 11:30. We'll do our best to reconvene by
11:31:04 3 12:30 or before.

11:31:05 4 With that, the jury is excused for lunch at this
11:31:08 5 time.

11:31:08 6 COURT SECURITY OFFICER: All rise.

11:31:10 7 (Jury out.)

11:31:10 8 THE COURT: Counsel, we need to cover the existing
11:31:38 9 and unresolved disputes regarding demonstratives to be used
11:31:41 10 with Mr. Saffici.

11:31:43 11 I'd like those that are going to speak on those
11:31:47 12 issues from both sides of the case to meet me in chambers.
11:31:51 13 We'll do that as quickly as we can, and then we'll proceed
11:31:53 14 to lunch.

11:31:54 15 The Court stands in recess.

11:31:55 16 COURT SECURITY OFFICER: All rise.

11:31:56 17 MR. MELSHEIMER: Can I raise one question with the
11:31:59 18 Court before we break, just the Court's practice?

11:32:01 19 THE COURT: What's your question?

11:32:02 20 MR. MELSHEIMER: The question is, the witness,
11:32:04 21 I've tendered him for cross-examination. I want to
11:32:06 22 understand what's the Court's practice with respect to what
11:32:10 23 communication I can have with the witness, given that the
11:32:12 24 cross-examination has not started. I just need to
11:32:16 25 understand the Court's practice.

11:32:17 1 THE COURT: You don't need to talk to him.
11:32:20 2 MR. MELSHEIMER: Thank you, Your Honor.
11:32:21 3 THE COURT: Leave him alone.
11:32:22 4 MR. MELSHEIMER: Thank you.
11:32:23 5 THE COURT: All right. We stand in recess.
6 (Recess.)
7
8
9

10 CERTIFICATION

11 I HEREBY CERTIFY that the foregoing is a true and
12 correct transcript from the stenographic notes of the
13 proceedings in the above-entitled matter to the best of my
14 ability.
15

16 /S/ Shelly Holmes
17 SHELLY HOLMES, CSR, TCRR
18 OFFICIAL REPORTER
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